

An Analysis of Precautions in Armed Conflicts Under Islamic Humanitarian Law

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Abstract

The principles of international humanitarian law are recognized by modern international community and the member is stressed to follow it strictly. The principles of international humanitarian law give certain protections and immunities to certain class of people at the time of war. It helps to minimize the damages to human beings, also, to protect human dignity at the time of war. Moreover, principles of international humanitarian law were recognized by the Holy Prophet (SAW) in 7th century and were practically applied by him (SAW). This article is aimed to clarify the principles of precautions in international humanitarian law recognized by Islam. The researcher studied and cited the literature on principles of international humanitarian law and Islam. The findings suggest that the Modern humanitarian law was completely present in Islam. The rules of Islamic Humanitarian law are complex in nature and have covered almost all sorts and aspects of hostilities. The Islamic humanitarian laws are not converted in codified form, due to this, and no uniformity is found in the law—in the present day’s practices.

Key Words: IHL, Islamic Law, Holy Prophet, Human being, Principles

Introduction to Islamic Law

Law is rules and regulations formulated/recognized by the state for the administration of justice. Islamic laws are rules and norms formulated in the light of Islamic principles by an Islamic state for justice and equ’Alīty among the citizens. Islamic law is considered as a controller of Muslims’ lives in each and every situation and every aspect of human/Muslim life is discussed by Islamic norms. Islamic law, also, protects the rights of non Muslims in Islamic state. It may be defined as the law regulating the rights and duties of Muslims/non Muslims in Islamic state, in the entire life separately as well as collectively. Islamic law is considered as a way which clarifies the rights and liabilities of citizens in the light of Islamic directions, which looks to represent each and every part of a human life.

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Islamic International Law

Islamic law is not limited only to the state. It has also prescribed rules and regulation for the whole of Islamic world. Thus we can say that those Islamic norms, rules and laws, regulating the relationship of Islamic state with other states of international community are Islamic international law. Islamic international law regulates the financial affairs, bilateral relations, war and peace situation, trade and business, mutual agreements etc of Islamic state with other states in the world¹.

Islamic law defines complete relations. On one hand, it has clarified the relationship of Muslim societies and on other hand it has also fixed the relationship of Muslims with foreign states. The rules of Islam regulating and declaring the relationship of Muslims with foreign states is termed as Islamic International Law.

The significant aspect of Islamic law which covers generally the subject of the research is the general standards of international law (Al-Siyar), which applies to the relations of states in war and peace.

Al-Siyar is the branch of Sharia known to early Muslim law specialists/ Jurists and was fixed with idea of international law of the time. It identifies the relationship amongst Muslims and non-Muslims, which was practicable to the Muslim societies of Medina in 630 AH².

Despite the fact that it initially related to the Prophet Muḥammad's (SAW) directions in war and it was in this manner form'Alized to incorporate laws on the conditions for peace and war. Imam Abu Hanifa was the primary researcher to organize and form 'Alize the idea of al siyar in his addresses he gave titled "the Muslims laws of war and peace". From that point, his addresses were aggregated by his disciples, Muḥammad Ibn Hassan Shaybani for the content "Prologue to the Laws of Countries". The content was later on incorporated in English by Majid Khadduri entitled that the Islamic Law of Countries and it is the reason for the contemporary Islamic international law.

Islamic Humanitarian Law

Humanitarian law provides the rules for the security and safety of the injured, the women, children, the Detainees of War and the Regular citizens at the time of war. It also provides rules for the administration of armed strife.

Islamic principles and practices formulated for the protection of injured, women, children, sick person etc at the time of war are termed as Islamic humanitarian law³.

Humanitarian Law and Human Rights

The two expressions Human Rights and the humanitarian Law have two particular implications in the contemporary writing of inter; law. There has been a long debate on the introduction of the last idea as particular from the previous. In 1969, when the General meeting of the UNO asked the Secretary General to give a write about the normal human rights in war, numerous researchers talked about whether the term had been legitimately utilized. At all occasions, there is doubt in the minds of the researchers on this topic. However the words are clarified by modern jurists/researchers to great extent.

The International humanitarian law tries to decide human rights at the time of war or armed equipped operations while human rights incorporate the rights which decide individuals' rights at the time of peace. At the end of the day, Humanitarian Law has two principal components:

1. The Security of the Injured, the women and children, the Detainees of War and the Regular citizens.
2. The administration of armed strife.

Be that as it may, human rights relate to everybody at all circumstances.

From the point of view of a philosophical investigation, one can state that Human rights watch the humanitarian principles and related Rights are gotten from humanity towards man. The humanitarian law applies to human being without discrimination as to race, creed, nation' Alīty and so on, or at the end of the day, to human instinct.

Likely, a few researchers contradict the idea of universal compassionate law in Islam. In their eyes, how might one separate some portion of Islamic humanitarian law, naming it as humanitarian while by accord we trust that every Islamic law are compassionate and Islam implies peace and harmony.

Under Islamic inter; law, Islamic humanitarian law is a basic component and essential principle of the Islamic legal framework. It is framed not just with respect to the thought of wars but also on the Muslim confidence and on the way of the Islamic legitimate framework, and its origination of relations between the Islamic world and the world outside it. Islamic humanitarian law is a basic piece of Islamic international law (Siyar), which just alluded to as those tenets and practices that sharia permits in international relations. Along these lines, inter; law in the Islamic framework varies from

contemporary ideas, as the Islamic law of countries was an essential piece of Islamic law as opposed to a different grouping of law⁴.

Meaning of Islamic Humanitarian Law

Islamic Humanitarian Law is rules and regulations which are recognized by the Islam in the conduct of hostilities. These are theoretical as well as practical. Theoretical rules are in the shape of the sayings of the Holy Prophet (SAW) wherein the rules of prisoners of war, the general principles in the battlefields during the time of war prohibition of cruel behavior towards the enemies. Theoretical, also, includes humiliation of dead bodies, killing of women, children, sick persons and those who are not taking direct participation in war. Beside that there are a lot of practical examples of the Holy Prophet (SAW) and Khulafai Rashideen is included in the Islamic Humanitarian Law. Although the rules of humanitarian law are not codified in Islam however, the principles are established by the holy prophet (SAW). during the conduct of war at that time and the same were strictly observed by companions/Muslims from time to time.

Islam arose in the seventh century when war, barbarism, etc were predominant in all parts of life of Arabic society. It was the time in which might was right. No social norms were completely and effectively available there. No rules were recognized for the regulation of financial and social de'Alings. The idea of state, nation'Ality, and rest of the relations were almost not in existence. Islam tried to fill these gaps.

The essential focus of Islam was to develop confidence in the people with a view to built up an advanced society, which will undoubtedly be the ace of its own predetermination. To this cutting edge society, Islam appeared a religion in light prescribed by Allah in the Holly Qurān, the custom and the Ijتهād (the utilization of motivation to touch base at truth in Islam)⁵.

The Sources of Islamic Law

Islamic law was framed from different sources recognized by Islam itself like Qurān, Sunnah, Ijmā', Qiyās and ijتهād etc. The primary sources of Islamic law are Qurān and Sunnah while rest is the secondary sources. The Qurān is the Expression of Allah, the creator of the whole universe who sent it down to his creation/human being for the direction of humanity. The Qurān was revealed upon the sacred Prophet SAW at various stages in the tenure of 23 years. The Qurān was sent for the direction of mankind in common and

other universal life to all classes of individuals in every circumstance. The main objectives of the Qurān are monotheism, the belief that there is just a single God. At all occasions, its rules cover all parts of human life.

The holy Qurān is divided into 114 Surāh (sections) in which different aspects of life including Mu'āmilāt/ de'Alīngs, Ibadaat and punishments etc are covered. The laws communicated in the Holy Qurān are related to the rights and liabilities of Muslims Like rights of neighbors, rights of parents, children, spouses and poor relatives. It is important that the laws incorporated into 200 verses are related to five crucial standards, which are the basics principles of Islamic law. These standards include:

1. Equity and fairness and natural Justice.
2. Regard for individuals' sentiments
3. Satisfaction of guarantees
4. Striking back

By and large, these five standards constitute the vital estimate of the formulation of Islamic law. With the passing of the holy Prophet (SAW), the revelation arrived to an end and nothing can be certainly added to the Sacred Qurān.

The prophet's convention (Sunnah) is the second source. The prophet's behavior in satisfying his main goal and his direction towards others are the wellspring of the laws, which appreciate lawful power in Islamic law. These laws interpret the Qurānic laws or decide how those laws ought to be put into implementation.

The fact of the matter is that the Qurān and the Sunnah had profound roots in the life of the heavenly Prophet (SAW) and after him; nobody was equipped for authorizing laws. Since life is always showing signs of change and Islam has a steady nature, there was a requirement for another source of law, for making new principles relating with new wonders inside element social orders. Therefore, Ijma was developed by the companions of the holy prophet (SAW) as third source⁶. And the new matters were dealt and decided by them through their mutual consultations⁷.

After the Ijmā', another source called ijthehad developed, in particular that, all laws and new answers for regulating the human conduct ought to be understood on the premise of the previously mentioned general principles. It must be noticed that any rule or arrangement, which does not accord with the already said central standards, can't be seen to be Islamic source of ijthehad.

This source is the regulation of Islamic law, Ijthehād unequivocally communicated in the Sacred Qurān. By excellence of Ijthehād, we can

comprehend the essential standards in the changeable existence of social orders. In any case, we ought to underline that this comprehension can happen inside the principles of Islam.

What roused union in the profound and common parts of Islam in the initial three centuries was this source? Notwithstanding, tragically at the season of the Abbassid line the rulers who longed for vast control wanted to stop Ijتهād and bar the inductive strategy. From that point on, Islam and its arrangement of rights stayed static in a dynamic world.

The results of the choices made by ‘Abbassid line damaged Islam and its central goal to spread progress. Just over the current decades, the new era of the jurisprudents and Islamic legal counselors had plan of action back to Ijتهād because of their experience with the issues of the world today. In any case, their endeavors were blended with questions and fears, for the new state with the force of enactment constrained their part.

Besides that Qiyās, istihlal, istihsān etc are also considered as the secondary sources of Islamic laws.

Principles of Precaution Under Islamic Humanitarian Law

Many principles and practices in Islam where different precautions are recognized under Humanitarian law in Islam. Some of the precautions are as under

A. Cleanness of objectives of War

Islamic law recognized war but it has also specified that the war must only be for Islamic purpose/protection of life and property of muslims/muslims honor. The war must not be fought on malafied intention. It shall be conducted only where interest of the general public is involved or gross rules of Islam are violated. Holy prophet SAW directed a Muslim commander at the occasion of Sarya Dumatul Jandol to put your step in the name of Allah and prove your fight purely in the way of Allah, fight with the persons who are negating Allah but never commit cheating and treason⁸. So, jihād is always fought only in the name Allah.

B. No humiliation and killing of persons unable to fight.

A person who is not able to fight due to illness, old age or other inability or disability or a person who is not participating in the conduct of hostility shall not be targeted.

The short theme of the directions made by Ḥaḍrat Muḥammad SAW on the occasion of Sarya Dumatul Jandol to the commander that put your step in the

name of Allah and prove your fight purely in the way of Allah, fight with the persons who are negating Allah but never commit cheating and treason, Don't kill sick and underage minor. That is the responsibility on your shoulder from Allah and know that the practice of your prophet is in accordance with that directions⁹.

C. Not to put enemy on fire

The body of enemies shall not be put on fire. No living being and no death body shall be burnt. In this respect, Ḥaḍrat Abū Hurayra RA reported that the Holy prophet SAW sent them in assembly and he told us to burn two person when found. Then when they were leaving the Holy prophet SAW told them that they were directed to burn two persons but the punishment of Fire will only award by almighty and he directed the assembly to kill them when found¹⁰.

Once Ḥaḍrat 'Alī RA killed some people by fire who was the followers of Abdullah bin Saba who were apparently become Muslim for the purpose to derail Muslims. They believed that Ḥaḍrat 'Alī is their God. Ḥaḍrat 'Alī RA demanded them for retraction and then he burnt them when they were not retracted. The news reached to Ḥaḍrat 'Abbās RA who stated that he was not used to kill them if he was in the place of Ḥaḍrat 'Alī RA because the Holy prophet SAW had told that don't give punishment of fire to any one however kill them¹¹.

Therefore, the Holy Prophet SAW prohibited the companions from killing/putting of people by fire.

D. No killing of Women and children

Islam discourages the killing of women and children at the time of war. The women and children are usually unable to participate in war. Those women and children who are not taking part in the hostility shall not be killed. It is reported from Ḥaḍrat Rabūḥ bin Rabī' (RA) that once in an Islamic War, they were present with the Holy Prophet SAW. The Holy Prophet SAW saw the people who were gathering on a thing. The Holy prophet SAW sent a person for the purpose to look at the occurrence. The person went and returned and stated to the Holy Prophet SAW that a woman is killed and the people are gathered around her death body. The Holy prophet SAW said that she was not fighter, He sent a person to the commander of the war, Khālīd bin Walīd with a message to refrain from killing of women and labours¹².

E. No looting, plunder of enemy property

Looting and plunder of the enemy property is also prohibited except Māl Ghanīmat which is allowed only on battlefield.

F. No unnecessary destruction.

The destruction of properties of enemies is prohibited. The arches of enemies shall not be burnt or destroyed otherwise. Their movable and immovable properties shall not be destroyed unnecessary.

G. No killing of prisoner of War

The Holy Prophet (SAW) has treated the prisoner of war with mercy and kindness. The practices of Islam show that the prisoners shall be treated kindly. They shall not be killed. Once, the Holy prophet (SAW) released the prisoners of war on the condition to educate the Muslims.

H. No killing of qasid e jang/Ambassadors

The person who is appointed to carry messages to the enemies shall enjoy special immunity and he shall not be killed.

‘Ibād bin Hāris was the Ambassador/ Qāsīd of Musalma Bin Kazzāb. He appeared with his humilities message. The Prophet SAW told that if the killing of ambassadors were not prohibited he was used to break his neck.

I. No cutting of body organs

The cutting of body organs are strictly prohibited in Islam. The organs of the enemy’s body shall not be cut after death at the time of war. A prisoner namely Suhāl bin ‘umro was prisoner of Badar, who was very vocal in speeches. Ḥaḍrat ‘Umar R.A requested the holy prophet SAW to cut his teeth in order to disable him to speech again against the holy prophet SAW but the holy prophet SAW rejected his request and stated that it comes with in the definition of Masla, and there is apprehension of punishment in Ākhirat¹³.

J. No violent acts

No violent act shall be committed against the enemies at the time of war.

Ḥaḍrat Muḥammad SAW prohibited the killing of tied person with violent acts. Ḥaḍrat ‘Ubaīd RA narrated that they had gone for war with ‘Abdur Raḥmān bin Khālīd. Once four persons were arrested from enemies and produced before him He ordered to kill him in tied. That information reached to Ḥaḍrat Ayūb Anṣārī RA, He said that he heard from the holy

prophet saw that such kind of killing is prohibited. He further stated on oath that he will not be prepared to kill even a chicken in such tied condition. When this news reached to ‘Abdur Raḥmān bin Khōlid He paid expiation and released four slaves ¹⁴.

K. No violent behavior with prisoner of war

Besides killing of the prisoners, it is the preaching’s of Islam that they shall not be treated violently. They shall be humanly treated and all the necessities of life shall be provided to them. In Badar, the holy prophet SAW released the prisoners on payment of Fidyā However some of them were released without payment of Fidyā. Matōb Bin Hantab, Saīf bin Abi rifa’, Abū Ghaza Ḥajmī etc were included in those who were released without payment of Fidyā ¹⁵.

The Holy prophet SAW has always taken precaution at the time of distribution of prisoners of war among the companions. He has never separated the minor infants from their mothers. The Holy Prophet SAW has said:

“Separation of children from the mother will not be acceptable”

The Holy Prophet SAW also prohibited separation of sister prisoner from her brother till her age of majority.

Ḥaḍrat ‘Alī RA narrated that once the Holy prophet SAW gave me two minors from the prisoners of War. Ḥaḍrat ‘Alī RA stated that one of was sold out from the received prisoners. The prophet Hazrat Muḥammad SAW once came to see them. When he has not found the second minor prisoner, he asked Ḥaḍrat ‘Alī RA about him and Ḥaḍrat ‘Alī RA replied that he sold him out. Then the prophet SAW stated that NO NO and asked Ḥaḍrat ‘Alī to return him and Ḥaḍrat ‘Alī RA cancelled that transaction and the two prisoners brother ware gathered again ¹⁶.

Conclusions

The standard specified by international humanitarian law is basically originated in Islam. The practices and preaching of the Holy Prophet SAW had specified the rules/ law of war and followed by the companions in their practical life strictly. The Islamic humanitarian law protects the civilian population in Jihad; it also gives protection to those who are unable to fight i.e. women, children, disable and sick persons etc. Islamic humanitarian law also protects the rights of prisoner of war and provides the principles and practices according to which they shall be treated humanely. No where humiliation of human in the history of Islam and in the preaching of the Holy prophet SAW is repotted but Islam has always provided dignity and respect to

human being. After the battle of Badar, the Holy prophet SAW directed the companions of provide good food to the prisoners of Badar. In most of the circumstances, the companion had eaten dates and provided good food to the prisoners. In short we can say that the Modern humanitarian law was completely present in Islam. The rules of Islamic Humanitarian law are complex in nature and have covered almost all sorts and aspects of hostilities. The Islamic humanitarian laws are not converted in codified form. Therefore, there is no uniformity in the law in the present day's practices.

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