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Analysis of Civil Protection in Islamic Humanitarian Law

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Abstract

Humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects person who are not participating in the hostilities and restrict the means and methods of warfare. In Islamic approach also has been emphasized on protection of civilians such as women, children, religious personnel, wounded ad sick combatants. These categories of person are entitled to respect for their lives and for their physical and mental integrity. In this regard there could be some exceptions for example enemy may misuses the status of civilian's immunities to overcome. So in this case the circumstances in which derogation of civilian's immunities is permitted should be taken in to account. This article shall examine legal statues of protection of civilians in Islamic humanitarian law. In doing so scale and methods of protection of those persons shall be considered. It concludes Islam prior to modern international law has taken steps to promote and regulate rules governing the conflicts arms in general and civil protection in particular.

Keywords: protection, civilians, Islamic humanitarian law

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I. INTRODUCTION

War has a long history as old as human history. Although this phenomenon is discouraged but undeniable. The inevitability of war has led schools of thoughts, religions, and the international communities to obey and follow some rules and principles during the war. It should not be considered that there is a possibility of war as fought by all means and methods for the destruction of the parties to a conflict. Obviously, in the event of war, the hostiles are not free in the application of methods and principles of war; there is a principle that only in the time of war has to be obeyed by the parties to conflict' behavior in different aspects of the regulation. The principles and rules of humanitarian law, which is called the law of war, have dubbed the goals. Among the most important goals of setting the rules and regulations in the wartime, civil protection is vital to be considered. Because the experience of wars in the history has shown that the main victims of destructive conflicts in different historical periods have been civilians who are not involved in the war. The roots of the rules and laws of war, in general, and the rules of protecting people under the protection rights, specifically, are fully regulated in the Islamic rules and teachings; and it can even be claimed that the rules and regulations are recognized with the rise of Islamic civilization. Given the importance of the protection of civilians in times of conflict and the emphasis in this regard in the light of Islamic principles in Islamic sources, this article attempts to explain the civil protection in the Islamic humanitarian laws. Therefore, the main question of this paper is to examine the principles on protection of civilians in the Islamic resources. To answer this question, there is a requirement to have a brief look at the concept and historical evolution towards a civilian support principles, which is considered in Part II. In Part III, the civilians' protecting principles and regulations are examined and understood; the Islam's emphasis on Islamic sources is considered in Part IV; and finally, since the principal may be allocated or being exempted, the subject to exceptions at the principle of the protection and safety of civilians is reviewed in Part V.

II. CONCEPTS AND HISTORICAL EVOLUTION OF THE PROTECTION OF CIVILIANS

To clarify the subject, there is a need to provide a clear and brief definition for that matter, and a glimpse of the past of phenomena may provide a better evaluation and investigation of the changes of the phenomena. Therefore, in this section, the investigation of the matters starts with the definition and the historical evolution of the protection of civilians when the conflicts commence.

A. The conceptualization of the Protection of Civilians

Humanitarian Law are the set of the rules and regulations during wars, unlike the human rights which is the set of rights and privileges that everyone is involved regardless the time of peace or war[1]. The Islamic humanitarian law, which is only executed on applied specific circumstances of the hostiles, individuals is divided into two groups: the civilians and military. The military individuals include the applicable military aims, whereas the civilians are under the cover of humanitarian rules and regulations [2]. Thus in the Islam school, the civilians should not be attacked; the civilians are persons who, during wartime, do not participate in hostilities. The protection of civilians, including protection of civilians, supports the protection of certain groups of people, such as injured civilians including women, children, the elderly, the sick and the clergymen [3].

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In fact, the main goal of protecting civilians in Islamic humanitarian law is to reduce or prevent the damaging effects of armed conflict on civilian; i.e. The people who have no part in the fighting are safe and have immunity.

B. Historical evolution of civil protection

At a time when West was in the transition from the Middle Ages to the Enlightenment, the Islamic civilization emerged in the East and unlike during the darkness of the Middle Ages, Islam was an important development for the formation of international law, in general, and international humanitarian law, particularly; for example, Islamic civilization plays an important role, especially in the observance of humanitarian law in armed conflicts with other non-Muslim nations, Including Islamic humanitarian requirements of not killing women and children and civilians in general. In the Islamic perspective, this era is divided into two groups, one called darol Arab, the land of war and the infidels, and Darol Eslam or Land of Islam. In general, there is three based Islamic civilization that defines the war and the need to comply with specific rules of war. The first base is safety or security; security is the privilege that is given to infidels and is considered as the holy war against infidels and suspended jihad. The second basis is called the convention, which means that based on this basis, the non-Muslims who has Holy book, governing by the Islamic government rules and live in Darl-o-l Eslam, and get the tax, which was called "jaziyeh". Covenant fact that the infidels were given permission to live in Islamic countries by paying some amount they can live. The third base means the treaty is set between Muslims and infidels and as long as necessary, they would adhere to the treaty[4].

So in Islam, according to the order and relationship with other nations, the tripod of security, convention and the treaty were based. Therefore, it is cleared that during the dark ages of medieval, Islam has had a very important role, especially in the realm of humanitarian law is because, at the time, the war occurred more often.

III. THE PRINCIPLES GOVERNING THE PROTECTION OF CIVILIANS

The general rule in Islamic Rules is the law of not killing the individuals who don't participate in the war; the law of "Don't kill the one who is not killing" is applicable rule to be conducted during the war and it is considered as the Islamic humanitarians rule. One of the Holly Quran's verses (2, 190) mentions that "you fight in the path of Allah against those who come to fight with you. Do not exceed the limit. Indeed, Allah will not like the transgressors." Quran interpreters and Islamic scholars have various interprets regarding this verse. For instance, some consider "moghatale" (killing) has the sound of "a" at the beginning which means kill [5]. Others define killing as warfare which has the "e" sound, which some believes that it defines those who commence the war [6]. Therefore, according for the mentioned definitions, it can be concluded that "Moghatel (the Killer)" is called a person who participates in the war, and those who doesn't participate in the war or for any reasons cannot participate in the war, such as women, children, elders, injured people, and patients are not considered as killers [7]. However, the view of protecting the civilians during war in the Islamic humanitarian rules is based on the basis and principles that is legitimized the obligation of application of such a protection in action. In this section the principles and the basis of protection of civilians are discussed to identify one of the highest basis in this regards in the Islamic definitions.

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A. The Principle of humanity

The principle of humanity that is associated with the principle of human dignity is considered as the basis of the protection of the civilians. According to the worldview of God, the source of all life, including human and innate and instinct rights are granted to him by God Almighty to all human beings [8]. Takrim (respect) merits human because his creator blows his soul to him and said, All human beings are equal and inherent dignity equally and normally they beneficiate from such a dignity equally and no one is distinguished differently over another. Humanity may include a human as a whole meaning of philanthropy and altruism as well. Link of Islam to humanitarian principles have related to its rise. In circumstances that human history has witnessed the saddest behavior during the battles, the rise of Islam is considered as the transcendental step to improve this situation and human dignity. In the teachings of Islam, what causes the suffering of humanity is condemned, and human dignity protection to achieve prosperity and an end to human suffering, includes its objectives. God explicitly has introduced human dignity[1]. The philanthropy or humanity principle is considered as the ethics governing protection of civilians and since Islam is based on Islamic ethics, it is obviously not far from the protection of civilians criteria [9].

B. The principle of distinction

The distinction principle of the military targets from civilian ones is one of the fundamental rules of humanitarian law, law which has been emphasized in Islamic humanitarian law. This principal indicates that the parties to conflict must distinguish the difference between the military personnel and civilians, and the combat operations should be solely against military targets [10]. Military targets, including those who have participated directly in the war or the properties that they are considered as military assets in their nature and purpose, and their destruction to repress the hostiles will be an advantage[2]. According to Article 51 of the additional protocol, civilians should not be attacked [11]. In this regard, any operation that resulted in civilian casualties and terror among them is forbidden [12]. Religious sites and cultural property, and residential facilities include the civilian targets. The principle of separation should not be considered as military targets[3]. In Islam, the safety and protection of the civilian population and their property, as well as civilian facilities, including respect for the principle of distinction are essential. Such a principle must be upheld without discrimination.

C. The principle of peace and coexistence

The peace and the coexistence principal are the pure Islamic principles that can be considered as the basis for civil protection. Islamic law has the view of respecting the dignity and honor of humanity and calls for brotherhood and emphasizes on abstinence as the basis for international relations in times of war and peace, the protection of the civilians means no attack on civilians and the destruction of places recognized as civilian. God points to the mutual principles between Islam filed and the original book where it says “O People of the Book, (come to common terms between us and you that), we will not worship (anyone)

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[1] Asra, verse 70 says, “Indeed we honored the children of Adam” Allah in Tin, verse 4 says, “Indeed created man in the best of moderation” , and God created man with the distinctive characteristic of reason and through it superior to other creatures of its own.
[2] Section 2, Article 52, first protocol
[3] Section 2, Article 52

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except Allah; we will not consider anything equal to him[4].” Interpretation of the principle of equality of human beings in humanity appliances in Islam where it says “O mankind, indeed, we created you from a man and woman. We made you branches and tribes so that we should know each other. Indeed, those among you who fear Allah the Most, are the Most righteous[5]. Allah is knowing, well Acquainted. God also addressed to Muslims “And do not argue with the people of the Book, except the unjust among them, except in a good way. Say, we believe in that which has been revealed to us and that which has been revealed to you. We submit only to Him.[6]” Even the Quran commands Muslims that “Do not scold those whom they prey, other than Allah. They will foolishly scold Allah, transgreesing the limit. Thus, we showed their deeds attractive to every community. Then their return is only to their God. He will inform them about what they have been doing.[7]” The emphasis is on the principle of peace in the Holy Quran and says “Except those who have joined the community which made an agreement with you or those who have come refusing to fight against you or against their community.[8]” As the verses of Surah Anfal verse 61 above[9] and also follows and Allah emphasis on their incline towards peace and the interpreters of Quran interprets the above verse and other verses related to peace as the principle in Islamic society [13]. It is clear that peace and coexistence accepted principle in the Islamic system, which should be considered as the basis for war, and whereby in any way and manner should not be used in war, and purely target the military, but not the civilian. This is the principle of distinction between military and civilian targets, which is necessary.

Testaments to the principle of peace and friendship have been pointed out as an example of Imam Ali (AS) as recommended by the ruling Islamic community says “to the consolidation of peace and maintain the peace among the people, sit among scholars and consultants, because peace leads to justice and revealing the nullity of the void [14].

IV. THE SOURCES OF PROTECTION OF CIVILIANS

The divine and solubility are the features of the Islamic system. Islamic legal system simply is not worldly but have a divine origin [15]. Islamic rules derived from Islam and its wholeness are addressed to any person at any time and place. In Islam, there is only one God and one Law. The law addressed to all without discrimination. Human rights and privileges in the Qur'an is known that is the necessity in social life. In this regard, to provide context to make concessions and not to infringe on their rights, the formation of legal framework is necessary for the light of all people to achieve their rights and privileges and abuses of the rights have been blocked. Such a law on religious communities is derived from the teachings and commandments [16]. Quran, Sunnah, ijma and ijtihad of Islamic sources are the rules of humanitarian law regarding the protection of civilians. The Holy Quran says on the protection of civilians that ‘You fight in the path of Allah against those who come to fight with you. Do not exceed the limit. Indeed, Allah will not

[4] Quran, Al-Emran, 64
[5] Quran, Hojorat, 13
[6] Quran, Ankabot, 46
[7] Quran, Anaam, 108
[8] Quran, Nesa, 90
[9] Quran, Anfal, 61

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like the transgressors.[10]" Commentators order not to exceed the limit abuse of civilians under the auspices know [17].

Based on the holy prophet's (PBUH) life, Protection of civilians was evidenced during the war in the early days of Islam and it is quoted in Hadith of the Prophet (PBUH) that some actions are prohibited such as killing women and children. For example, in a hadith narrated from the Prophet: "At the end of one of the battles, Prophet (PBUH) observed that some people have gathered. He had arranged an office to figure out the situation. The officer returned to the Prophet (PBUH) and said the cause of death of a woman. Prophet Muhammad (PBUH) said: Why have to kill her while she could not fight at war? [18] "In the event that some Muslims killed number of children. Prophet outraged and said, "Why do some people today are so militant that they kill the little ones." Ibn Rabi also narrated that in one of the battles that Khalid was commander the person said, "Go tell Khalid not to kill children and women." Through various sources, it has een narrated that when the Prophet (PBUH) wanted to send people to war before moving, he was telling them that "By the name of God and with the help of his move and be careful not to kill women or children among them [19]. " In this way it becomes clear that humanitarian behaviors toward civilians, including the ill, injured, women, children and the elderly in the Islamic humanitarian law have been highlighted. And had them take care of recommendations that can be seen in the narrative texts. Of course, religious places and religious leaders should also be protected by these rules during the war. Religious leaders who are self-employed worship and not participate in the war are inviolable; because of non-interference in the civil war. The consensus of Islamic scholars, civilians, including women and children are inviolable and killing them is prohibited. Such a fatwa documented the traditions quoted from the Prophet that as it was expressed.

V. EXCEPTIONS TO PROTECT CIVILIANS

Abuse of persons' position under the protection is one of the ways in which the enemy may be used during the war; i.e. the enemy may equip or shield himself in order to protect themselves from the risk of failure. The question is whether attacks on civilians and enemy soldiers are used for this purpose is permitted or not? There are numerous public comments regarding the permit on attack on civilians; for instance, the scholar's opinion Allameh Helli when he says: "If the enemy shields himself by the women and children, he must refrain from attacks on civilians, unless the war starts, in which case these barriers can be dispelled [20]". "If the enemy shields on himself by the children, if you are on foot circle of conflict, can be shot by the enemy. Of course, the children should not be targeted, but the troops are hidden behind them are the target to be shot. "When the tension of the war is declined, the children cannot be harmed [21]. Others believe that the exception of the protection of civilians in Islam includes the position that the enemy's military forces cover up themselves as the civilian cover the military Muslim captives and actually use them as human shields to protect themselves in the war[22]. As it is concluded from the content of different opinions, although there are, exceptions in the protection of civilians In special and exceptional circumstances under which a permit has been issued for killing civilian, but it is needed to emphasize that the principle of the protection and safety of civilians is the priority, and as much as possible the practices should be used that do not violate safety and protection. Some jurists' reason for forbidding the killing of

[10] Quran, Baghareh, 190

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women and children in particular and citizens in general is that they do not participate in the war; therefore, it is believed that the cause is declines and the women and children participate in war due to their killing possibility, to kill them are permissible. However, the opinion of the majority of Shiite scholars killing women and children is absolutely prohibited, even during the war. The researcher, Allameh Helli said "killing women and children, though they aid in the battle arena is absolutely forbidden" and Sheikh Tusi said "The killing of women is not allowed, although they assist the military to fight against the Muslims, except in the case of emergency[23]" and Saheb Javaher also tells that Alameh said "all the scholars have consensus on the prohibition of killing women and children, and about killing women if it is required is not allowed.[24]" But in any cases, the principle of proportionality should be applied.

VI. CONCLUSION

Principles, including humanitarian and human dignity, the need to distinguish between combatants and civilians, peace and solidarity among human societies, are considered as the Islamic principles on the protection of civilians in time of war and conflict. The historical evolution of the rules of humanitarian law represents that Islam is based on a specific category of rules and is applicable only in time of war and conflict that has an important role. The difference in the approach of the Islamic system and international humanitarian law has led to a variety of topics including the humanitarian rules despite the fact that both insights insist on the need to protect civilians rely on different principles to protect civilians. Check Islamic sources such as the Quran, Sunnah and the consensus of the scholars of the need to protect civilians, including women, children, the sick, the wounded, the elderly and indicates Clergymen, although the abuse of civilians as a way to help the enemy to victory over the armies of Islam are among the exceptions to the principle of civilian protection. It is clear that the exception should be limited so sure and not go beyond the terms of the jurists' principal on this issue, especially since there is various consensus insists on the need to protect civilians, including women and children in all circumstances.

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