

“I KILL THEM, I DIE MARTYR” IS SUICIDE ATTACK MARTYRDOM? TOWARDS A HARMONIZATION OF MUFTI’S DILEMMA IN ISLAMIC JURISPRUDENCE

By

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Abstract

Suicide attacks nowadays have become a recurrent tactics of warfare used by militants group during conflicts in different parts of the world, especially within the Muslim developing and under-developed countries. The attackers, mostly use the tactics to kill people (who are presumed as enemies) while knowing fully that they will certainly or most likely die in the process. It has been opined by some scholars that several factors are responsible for the commission of suicide attack, which *inter alia* but not limited to the following factors, namely: religion or ideology, politics and socio-economic factor. However, the most controversial one among them is the religious or ideological factor. Religiously, the acts of suicide attacks are perceived on the one hand as a just means of effecting jihad (war) against enemies of Islam and as well as pinnacle of sacrifice and bravery in the cause of Allah. By so doing, they have a better future to live for, as they die martyrs (*shahīd*). On the other hand, it is considered as a self murder and an attempt to endanger the innocent civilian lives. These divergent views have indeed created a dilemma and vacuum for understanding the concept of *fatwā* (Islamic legal opinion) and the role of *muftī*(s) (Muslim jurists who issue *fatwā*) in this contemporary society. In the end, the paper recommends that the Organization of Islamic Cooperation (OIC) through its Islamic Fiqh Academy should come out with some harmonious verdicts (*fatāwā*) in response to major controversies bedeviling the Muslim *ummah* (community). This could be done by objectively resorting to the primary sources of shari‘ah (Qur’an and Sunnah); and also by putting into cognizance of the religious and public interests (*masālih al mursalah*) in taking any decision; thereby weighing the benefit (*maslahah*) and wrong (*mafsadah*) that it may cause to the religion and the Muslim community (*Ummah*) at large.

Keywords: Suicide Attack, Martyrdom, Jihad, Mufti, Islamic Jurisprudence

1. INTRODUCTION

It is a general principle under Islamic law that human life shall be safeguarded and protected at all possible costs due to its sacred nature. Hence, no life shall be taken except through the due process of law. What should be considered as “due process” shall be the question of law itself. To this end, the paper examines the meaning of martyrdom in Islam; it also verifies whether or not suicide attack can be considered as a legitimate means of attaining the status of martyrdom in Islam, thereby taking into cognizance the role of *fatwā* in the contemporary Muslim societies as a conduit pipe

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of harmony between the classical and modern understanding of the religion (Islam). In doing so, the paper discusses the relationship between the concepts of martyrdom (self sacrifice) and Islamic jihad with a view to looking at what constitute the lawful means and methods of effecting jihad in Islam. Similarly, discussion will equally be made on the legality or otherwise of suicide attack thereby making references to the provisions of the Qur'an, Sunnah and opinions of Muslim jurists. Mention will also be made on whether or not suicide attack can be considered as martyrdom under the Islamic *corpus juris*. Finally, the paper ends with conclusion and recommendations.

2. DEFINITION OF THE KEY TERMS

2.1 *Muftī*

Muftī is a Muslim scholar who interprets the shari'ah or one who gives Islamic legal opinion (*fatwā*) on a particular matter.¹ A *muftī* is therefore considered as a Muslim specialist who handles all problems related to Shari'ah (Islamic law) within the community. That is to say, the role of *muftī* has not been limited to only the issuance of Islamic legal opinion to a *mustaftī* (a questioner) but also to the entire public.² *Muftī* shall be a Muslim specialist who can play a fundamental role in the construction, elaboration and continued operation of Shari'ah.³ As a specialist who is legally and morally responsible to the society in which he lives in shall always issue legal answers to questions asked by individuals, public and judges.⁴

2.2 Organization of Islamic Cooperation (OIC)

The Organization of Islamic Cooperation [OIC],⁵ which was formerly known as Organization of the Islamic Conference, is the second largest inter-governmental organization after the United Nations. OIC has membership of 57 countries around the globe. The Organization is the collective voice of the Muslim world and ensuring to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world. The Organization was established upon a decision of the historical summit which took place in Rabat, Kingdom of Morocco on 12th Rajab 1389 Hijrah (25th September 1969) as a result of criminal arson of Al-Aqsa Mosque in occupied territory of Jerusalem, on the 21st August 1969.⁶ The Organization has its Headquarters at Jeddah, Saudi Arabia, pending liberation of Jerusalem. It consists of the following structure, namely: Islamic summits; Islamic Conference of Foreign Ministers; the General Secretariat; Standing Committees; subsidiary organs; Specialized Institutions; and affiliated institutions.⁷

2.3 Islamic *Fiqh* Academy

Islamic *Fiqh* Academy is one of the subsidiary organs of the OIC which focuses on solving and responding to the emerging problems presented by the contemporary world with a view to proposing answers to those problems. The idea of establishing

¹ Meaning of Mufti, available at <http://www.thefreedictionary.com/mufti>, accessed on 17th May, 2015

² Sayyid Muhammad Yunus Gilani, "Jurists and Legislators in Islam: Origins and Classification of the 'Ulama'", in *Contemporary issues in Islamic Law*, edited by Abdul Haseeb Ansari, New Delhi: India, Serial Publications, 2011, at 3

³ Hallaq B. Wael, *An Introduction to Islamic law*, UK: Cambridge University Press, 2009, at 8

⁴ Ibid, 9

⁵ This is the current name of the Organization, and it was renamed on the 28th June 2011

⁶ Available at <http://www.oicun.org/2/23/>, accessed on 18/05/2015

⁷ Available at fimforum.org/en/library/OIC_Overview_and_Analysis.pdf, accessed on 18/05/2015

the Islamic *Fiqh* Academy was proposed by then King of Saudi Arabia, Khalid Ibn Abdul Aziz Al Sa‘ud, during the OIC meeting of Rabi Awwal 1401 (January, 1981), which was held in Masjid al- Haram at Mecca, Saudi Arabia. The rationale behind the proposal was to have a body consisting of Muslim scholars and jurists with a representation from all member states. The proposal was accepted by the OIC in the subsequent year, 22nd August 1982 and consequently, the Islamic Fiqh Academy was established.⁸

3. REVIEW OF SOME SELECTED LITERATURE

The phenomenon suicide attack has been used nowadays as a warfare tactic of launching attacks against opponents. The attack by its nature seems to be indiscriminate, in which, it is difficult to distinguish civilians from combatants and civilian objects from military objectives; thus, the legality of the attack has always been considered as controversial one. It is against this backdrop, Munir⁹ examines the legality of suicide attacks vis-a-vis the concept of Martyrdom from the perspective of *Islamic jus in bello*. He examines different rulings of the Muslim scholars and jurists from various schools of Islamic jurisprudence in relation to suicide attack and martyrdom. In the end, he was able to draw a line of demarcation in respect of the following issues, namely: suicide *simpliciter* and suicide attack; suicide attack and heroism; suicide attack which targeted at civilians and civilian objects, as well as suicide attack which targeted at combatants and military objectives.¹⁰ Freamon [2003: 317-369] also analyzes the inter-relationship between the concepts of martyrdom, suicide attack and Islamic law. Although he equally looked at martyrdom from the Christianity and Jewish perspectives, but much concentration has been dwelled on revealing and analyzing the legal basis of martyrdom in the Qur’an, Sunnah and Islamic jurisprudence (including the opinions of the classical Muslim jurists).¹¹ Similarly, the author distinguished between the concepts of martyrdom in the Sunni schools from that of shi’ites. Tahir-ul-Qadri,¹² has condemned an unjustifiable killings of innocent civilians regardless of their faiths, affiliations and status. He described such an act as terrorism, which should not be allowed even during war or armed conflict.¹³ He explained the Islamic rules of conduct of hostilities and the need to maintain a dignified means and methods of warfare. It is in the light of the above discussions that this paper examines and analyzes the legal position of suicide attack under shari‘ah with a view to harmonizing the divergence stands of *muftis*; as well as exhibiting their roles in shaping the Islamic law in line with the contemporary developments.

4. CONCEPTS OF MARTYRDOM AND *JIHAD* IN ISLAM

4.1 *Martyrdom*

The idea about martyrdom in Islam is rooted in the Qur’an and Sunnah of the Prophet (s.a.w). In fact, it has been mentioned and celebrated in the following verses of the Qur’an: “And you say not of those who are killed in the way of Allah, “They are

⁸ Available at <http://www.albalagh.net/qa/ifa.shtml>, accessed on 18/05/2015

⁹ Munir, M., “Suicide Attacks and Islamic Law”, International Review of the Red Cross, volume 90, Number 869, (March 2008), at 71-89

¹⁰ Ibid

¹¹ Freamon, B.K., “Martyrdom, Suicide and the Islamic Law of War: A Short Legal History”, Fordham International Law Journal, vol, 27:299 (2003), at 317-369

¹² Tahir-ul-Qadri, M., *Fatwa on Terrorism and Suicide Bombings*, UK: Minhajul Qur’an International, 2010, at 117-154

¹³ Ibid

dead.” Nay, they are living, but you perceive (it) not.”¹⁴ yet in some other verses, the Almighty Allah says:

“Think not of those who are killed in the way of Allah as dead. Nay they are alive, with their Lord, and they have provision.” “They rejoice in what Allah has bestowed upon them of his bounty and rejoice for the sake of those who have not yet joined them, but are left behind (not yet martyred) that on them no fear shall come, nor shall they grieve.” “They rejoice in a Grace and a Bounty from Allah and that Allah will not waste the reward of the believers.”¹⁵

The martyrs will receive good provision from Allah (Paradise).¹⁶ And they will equally receive forgiveness and mercy from Allah (s.w.t).¹⁷ Thus, martyrdom can be defined as an act of self sacrifice or is a self sacrifice operation in the cause of Allah, which may result to death of the actor.¹⁸ It could also mean the act of conscientiously fulfilling the religious obligation and abstinence from committing the evils.¹⁹ This latter definition usually termed as greater martyrdom [*shahād al- kubrā*]. In a nutshell, martyrdom can be defined as an act of a martyr or a status which a martyr can attain while struggling in the cause of Allah.²⁰ However, most of the Islamic jurists have been relating the concept of martyrdom to self sacrifice committed in the cause of Allah during combat with the enemies of Allah.²¹ To this end, most of the Sunni schools and some of the Shi’ites jurists such as Imam Muhammad Hussayn Fadlallah are of the view that the martyr is one who is killed in fighting against unbelievers.²² Notwithstanding the differences of juristic opinions, the concept of martyrdom in Islam can be perceived from two different dimensions, namely: martyrdom in fighting for the cause of Allah against the transgressors or enemies of Islam (war for the defense of Islam) and the spiritual martyrdom which is strictly related to self discipline.²³ In fact, there are also other components of martyrdom which are not usually been emphasized by Muslim scholars such as death of a person as a result of drowning, or pleurisy, or plague, or diarrhea, or child birth.²⁴ It has also been confirmed that even scholars who engage themselves in the “jihad of pen” can also be

¹⁴ Qur’an 2:154

¹⁵ Qur’an 3:169-171

¹⁶ See Qur’an 22:58-59

¹⁷ See Qur’an 3: 157-158

¹⁸ The Islamic Ruling on the permissibility of Martyrdom operations, available at <http://www.religious.com/martyrdom>, accessed on May 3, 2013

¹⁹ Kelly, F. K., Sunni and Shi’i Martyrdom: A comparative analysis of Historical and contemporary expressions, Master thesis, Naval Postgraduate School, (2010) P 71

²⁰ Ibid see also Fath al- Bari 6/43

²¹ Kelly, F. K. Op cit

²² Ibid. According to Maliki jurists, a martyr is a person who is killed while fighting against unbelievers within or outside the Islamic land, (Dardeer’s Al- sharh Al Kabeer). According to Hanafi jurists, in order for a person to be qualified as martyr he must be killed by the unbelievers or found killed bearing a mark or wound (internal or external). (Hashiyat Ibn Abideen 2/268). According to Hanbali jurists, a person is qualified to be a martyr if died in a battle for defense of Islam, provided that he has a sincere mind, irrespective of any condition stipulated above. (Kash-shaf al- Qina’ 2/113). According to Shafi’i jurists, a martyr must be killed during combat in the course of Allah. (Mughui al- Muhtaj 1/350).

²³ Brokaan, “Martyrdom for Allah the holy Warriors of Islam”, (July 2010), available at <http://www.islam.watch.org>, accessed on May 3, 2013

²⁴ Daniel, W. B. Islam and the Muslim world, P 433, available at <http://www.gale.cengage.com>, accessed on May 3, 2013

considered as martyrs according to the Hadith (tradition) of the Prophet (s.a.w) that says: “the ink of the scholars will outweigh the blood of the martyrs.”²⁵ Similarly, an internal struggle among Muslims community to fight against injustice can also be considered as martyrdom.²⁶ This concept according to shi’ites shall have a nexus with the death of Imam Husayn (r.a) who was martyred in 680 AD at Karbala in Iraq as a result of struggling against injustice. Thus by choosing martyrdom, he ensured the ultimate victory of his community and earned the place of mediator for his people.²⁷

To begin with the first category of martyrdom (a self sacrifice during war), the Maliki jurists (such as Ibn Kuwaiz Mandad)²⁸ are of the opinions that, for an operation to be qualified as martyrdom, the following conditions must be fulfilled, namely: there must be an act (which could be either killing or inflicting harm or causing damage to the legitimate combatants); and that the motive of the sacrifice should be for the sake of Allah.²⁹ Similarly, the Hanafi scholars (such as Imam Abidin),³⁰ are of the views that martyrdom operation should have nexus with fighting alone and with the intention of sacrifice in the cause of Allah, provided that the aim will justify the means.³¹ This position has also strengthened the opinion of Ibn Taymiyyah in *Majmu’ul fatāwā*.³² Wherein, he opined that a martyrdom operation shall not only bear the act of killing, but also the important goal to be achieved at the end (i.e. defense of religion or self defense) that matters.³³

However, in determining the martyrdom operation, the Shafi’i and Hanbali jurists (such as Ibn Qudama)³⁴ have mostly emphasized on the number of the opponents who can be fought against. That is to say, a successful martyrdom operation and its effects may be considered as complete in Islam if the Muslim warriors are steadfast during combat period against the huge number of the enemies, especially if their number has doubled that of the Muslim warriors.³⁵ This is a command and assurance made by Allah in favour of Muslims to the effect that, if there are hundred steadfast persons they will overcome two hundreds and if they are thousand in number, they shall overcome two thousand of disbelievers with the leave of Allah.³⁶ So when they die in the process, of course, they die as martyrs.³⁷

²⁵ Ibid

²⁶ Ibid

²⁷ Ibid

²⁸ Cited in Qurtubi’s Tafsir 2/364

²⁹ The Islamic Ruling on the Permissibility of Martyrdom operations, available at <http://www.religious.com/martyrdom>, accessed on May 3, 2013

³⁰ Cited in his Hashiyah 4/303

³¹ The Islamic Ruling on the Permissibility of Martyrdom operations, available at <http://www.religious.com/martyrdom>, accessed on May 3, 2013

³² Majmu’ul fatawa 28/540

³³ The Islamic Ruling on the Permissibility of Martyrdom operations, available at <http://www.religious.com/martyrdom>, accessed on May 3, 2013

³⁴ Almughni 9/309

³⁵ See Al Majmu’ 19/291. See also Qur’an 8:15-16 where the Almighty said: “O you who believe! When you encounter a force (those who disbelieve) in a battle field, remain steadfast and never turn your backs to them.” “And whoever turns his back to them on such a day- unless it be a stratagem of war or to retreat to troop (of his own)- he indeed has drawn upon himself wrath from Allah. And his abode is Hell, and worst indeed is that destination.”

³⁶ Qur’an 8: 66

³⁷ The Islamic Ruling on the Permissibility of Martyrdom operations, available at <http://www.religious.com/martyrdom>, accessed on May 3, 2013

4.2 *Jihād*

Jihād is an Arabic word which simply refers to as “struggle” or “contention”.³⁸ The word “*jihād*” is directly related to the Arabic words “*Mujāhadah*” and “*Ijtihād*” which are respectively translated to mean: “to struggle” and “to make effort”.³⁹ Of course, it can also be interpreted to mean either a spiritual struggle or taking a principled stand in a difficult situation.⁴⁰ Araf,⁴¹ has also defined *jihād* as a warfare waged by Muslims combatants against the enemies of Islam; with whom he has no oath or truce; and for the purpose of defending and uplifting the word of Allah, the Almighty; and opposing the presence or penetration of the enemies into the (Muslim) Territory.⁴² Hence, *jihād* under Islamic law could be referred to either war against the oppressors and transgressors or self struggle in the cause of practicing the religion of Allah. The latter jihad is termed as “*Jihād al Kubrā*” (the greatest *jihād*). In a Hadith, the Prophet (s.a.w) was reported to have said that the best struggle is to struggle against your soul and your passion in the way of Allah the Most High.⁴³ Whereas, the former type of *jihād* is considered as the lesser one (*Jihād al-Sughrah*), and it is permitted only for the purpose of defending the religion of Allah (self defense) against the transgressors. This is evident from the following verses of the Qur’an:

“Permission to fight (against disbelievers) who are fought against, because they have been wronged; and surely, Allah is able to give them (believers) victory.” “Those who have been expelled from their homes unjustly only because they said: “our Lord is Allah.” For had it not been that Allah checks one set of people by means of another, monasteries, churches, synagogues, and mosques, wherein the name of Allah is mentioned much would surely have been pulled down. Verily, Allah will help those who help his (Cause). Truly, Allah is All-Strong, All-Mighty” “Those (Muslim rulers) who, if we give them power in the land, (they) enjoin salat (prayers), to pay zakat and they enjoin Al Ma’aruf (all that Islam orders one to do), and forbid Al Munkar (all that Islam has forbidden). And with Allah rests the end of (all) matters (of creatures).”⁴⁴

Jihād is permitted in Islam for the purpose of self defense and to resist aggression. It cannot be launched against people simply because of the differences in religion, faith and affiliation.⁴⁵ Islamic jurists in this regard have agreed on certain conditions to be fulfilled before embarking on *jihād*, namely: to ensure the protection of non combatants; to avoid waging a war because of the differences in religion or affiliation; and to desist from aggression.⁴⁶ In addition, the Prophet (s.a.w) has said that a *Jihād*

³⁸ Institute for Islamic Thought, *Jihad and th`e Islamic Law of War*, The Royal Aal Al- Bayt, Institute for Islamic Thought, (2009), P 1

³⁹ Ibid

⁴⁰ Ibid

⁴¹ A classical sunni jurists in the Maliki school of jurisprudence

⁴² Cited in Al-Zuhaili, W, “Islam and International Law”, *International Review of the Red Cross*, Vol.90, No. 869, (June 2005), P 279

⁴³ Cited in Muhammad Sa’id Ramadal al- Buti, *Al-jihad fil Islam*, Damascus, Dar al- fikr, (2005), P 21. See also Sunan Tirmidhi, Kitab Fada’ilal jihad.

⁴⁴ Qur’an 22:39-41

⁴⁵ Institute for Islamic Thought. (2009). *Jihad and the Islamic Law of War*, The Royal Aal Al- Bayt, Institute for Islamic thought P 1 see also Al-Zuhaili, W. (June 2005), Op cit, P 281

⁴⁶ Ibid

must also be conducted under the control of the pious Islamic leader otherwise it will be unacceptable.⁴⁷ Based on the above, it should be understood that it is not the aim of Islam to deprive; neither does a religion of persons constitute a cause for war against them according to Islam.⁴⁸ To sum up the discussion, martyrdom and *jihād* in Islam are intertwined. They are two inter-dependable concepts, of which, their legitimacy or legality depends on each other. That is to say, a martyrdom operation can be considered as a self sacrifice and as well as a *jihād* under Islamic *corpus juris* provided that the *jihād* (which is the root or cause) of martyrdom is legitimately or lawfully effected. Thus, for a *jihād* to be recognized as legitimate, it shall be executed in the cause of Allah; and it shall fulfill all the conditions mentioned earlier in the paper, otherwise it becomes a transgression or an unlawful persecution under Islamic law. Hence, any self sacrifice conducted in such an unlawful manner, could not be considered as martyrdom.⁴⁹

5. LEGAL POSITION OF SUICIDE ATTACK IN ISLAMIC LAW

Regarding the legal position of suicide attack in Islamic law, Muslim jurists upheld some divergent opinions. That is why the position remains a controversial one in all of the Islamic schools of jurisprudence (*Madhāhib*). The controversy stemmed from the notion that a suicide attacker is submitting himself to a just means of effecting jihad against enemies and oppressors of Islam; or is sacrificing himself in the cause of Allah in order to have a better future to live for in the day hereafter if he dies martyr (*shaheed*). Based on the above notions, many *fatāwā* (plural of *fatwā*) have been issued either in supporting or prohibiting suicide attack, but depending on the justification given by individual *muftīs*. The supporters of suicide attack are mostly associating it with martyrdom (self sacrifice). To this end, Al- Shaybani⁵⁰ was of the view that suicide attack is martyrdom and is permissible if it can be launched into a group of enemy forces with or without hope for survival provided that the end will justify the means.⁵¹ The same position was upheld by Shaykhul- Islam Ibn Taymiyyah.⁵² To further buttress the above position taken by such scholars, the *Qissah* (story) of Bara’ Ibn Malik (one of the Prophet’s companions) was cited as an example of suicidal act committed few years after the demise of the Prophet (s,a,w). The incident occurred in a battle called “apostasy war” against *Musaylamah Al-Kaddhab* (Musaylamah the liar), a man who claimed to be the Prophet of Allah. During the war, Bara’ who had always desired to die as a martyr, volunteered to be catapulted over a parapet by the Muslims soldiers so as to open the gates for the fort.⁵³ Furthermore, some of the Maliki jurists (like Al-Qasam Ibn Muhammad Ibn Al-Majshoon and Ibn Kuwaiz) are of the opinions that suicide attack is a legitimate heroic warfare if it can be carried out by Muslims soldiers and not by civilians who

⁴⁷ Institute for Islamic thought, (2009), Op cit

⁴⁸ Ibid

⁴⁹ Munir, M. (March 2008). “Suicide attacks and Islamic law”, *International Review of the Red Cross*, Vol.90, No. 869, P 71 at 80 as per the opinions of jurists.

⁵⁰ Imam Muhammad Ibn Al- Hassan Al-Shaybani. *Al-Shaybani Siyar Al-Kabir*, Quoted in a commentary by Sarahsi, (1997), Dar Al-Kutub Al-Elimiyat, Beirut, Lebanon, Vol. 4, P 250, cited in Munir, M. Op cit, P 80

⁵¹ Ibid

⁵² Ibn Taymiyyah. *Majmu’ fatawa Shaykh Al-Islam*, Dar Al-Aalam A-Kutub, Riyadh, Vol. 25, P 540, cited in Munir, M. Op cit P 80

⁵³ Ibn Jareer Al-Tabary, *The conquest of Arabia*, Fred, M. D. (Trans.), (1993), Pp 105-34, cited in Munir, M. Op cit P 81

are pretending to be soldiers.⁵⁴ Faisal Mawlawi and Nasser Al Fahd have also legalized suicide attacks on the basis of reciprocity.⁵⁵ They made reference to the following verses in the Qur'an:

“...Then whoever transgresses the prohibition against you, you transgress likewise against him...”⁵⁶ yet in another verse: “And if you punish (your enemy, O you believers in the oneness of Allah), then punish them with the like of that with which you were afflicted. But if you endure patiently, verily, is a better for As-Sabirun (the patient).”⁵⁷

Similarly, suicide attacks have been reluctantly legitimized by few scholars based on the special circumstances such as self defense or defense of sovereignty or resisting oppression from the external powers.⁵⁸ Based on this, Sa'ad Ghorayeb issued a *fatwā* legalizing the suicide attacks committed by Hezbollah on US embassy and Force Headquarters at Beirut, Lebanon, in 1983. Moreso, according to him, the attack was authorized by the Supreme Shi'ites leader (*Marja'a*) Ayatollah Imam Khomeini for the purpose of defending the Muslim land.⁵⁹ In addition, Imam Muhammad Hussayn Fadlallah also supported suicide attack against the transgressors, especially in the event of oppression.⁶⁰ He cited the Palestinian case as a reference, where he affirms that they are helpless and they do not have any option than to defend themselves.⁶¹ However, in the contrast, he condemned the September 11, 2001 attacks. According to him, it was not same as the Palestinian case where people are out to defend their Territory.⁶² Shaykh Al Qardawi⁶³ also justified suicide attacks thereby declaring it as martyrdom and heroic operations that are permitted by Shari'ah. He went further to assert that even if it is to be targeted against civilians as in the case of the Palestine/Israel conflicts. According to him the civilians in Israel society are militaristic in nature hence they are not among the protected persons under Shari'ah.⁶⁴ However, he condemned the September 11, 2001 attacks where he distinguished the two positions. Thus he said: “the justification for the attack does not extend to committing suicide attack in other people's land as it defeats the aim of the attack, which primarily to resist oppression and to defend the sovereign land.”⁶⁵ Furthermore, Shaykh Tantawi⁶⁶ and Ali Guma'a⁶⁷ have said that the legality of suicide attack depends on whether the attack is targeted at or directed to military or civilians. That is to say, the attack is lawful if is targeted at or directed towards military objective but not vice versa.⁶⁸ In a similar manner, *mufti* Muhammad Ibn Isma'il legalizes suicide attacks but with a condition that they should be carried out in the course of war.⁶⁹ This

⁵⁴ Munir, M. Op cit, P 80

⁵⁵ Ibid, at 88

⁵⁶ Qur'an 2:194

⁵⁷ Qur'an 16: 26

⁵⁸ Munir, M. Op cit, P 80

⁵⁹ Ibid P 73

⁶⁰ A leading figure among the Lebanese shi'ites

⁶¹ Munir, M. Op cit, P 73

⁶² Ibid

⁶³ Shaykh Yusuf Al-Qardawi is one of the leaders of Muslim Brotherhood

⁶⁴ Munir, M. Op cit, P 75

⁶⁵ Ibid

⁶⁶ A Grand Imam of Al-Azhar in Cairo

⁶⁷ A renown *Mufti* in Egypt

⁶⁸ Munir, M. Op cit, Pp 75-76

⁶⁹ Ibid

implies that suicide attacks could only be legitimized if carried out against combatants. Similarly, according to *mufti* Muneeb-ur-Rahman,⁷⁰ the *fatwā* on suicide attack should be considered with limitations and peculiarities. Thus, he prohibits suicide attack in the Pakistan Territory, but still legalizing it in the cases of Palestine and Kashmir. He distinguished between the two situations on the basis that the struggle in Palestine and Kashmir is not same as in the Pakistan. He maintained that the situation in the former is strictly for the purpose of defending land against the oppressors.⁷¹

In contrast and in complete deviation from the above positions; which is equally the true reflection of Islam, Shaykh Abdul Aziz Ibn Abdallah Ibn Baz,⁷² condemned suicide attack *in toto* and declares it as self murder.⁷³ He further said that suicide attack has no any nexus with *jihād* talk more of martyrdom; according to him, Islam does not permit any unlawful means and method in performance of its obligation.⁷⁴ The same position upheld by Shaykh ul- Islam Muhammad Tahir-ul-Qadri,⁷⁵ where he said, suicide attacks are indiscriminate in nature; it affects the Muslims and non Muslims as well as their properties and places of worship.⁷⁶ Hence according to him, anyone who killed an innocent life is as if he killed all mankind.⁷⁷ Yet in another verse, Allah Has said in the Qur’an: “Verily, those who put into trial the believing men and believing women (by torturing them and burning them), and then they do not turn in repentance (to Allah), then they will have the punishment of the burning fire.”⁷⁸ Similarly, the Prophet (s.a.w) was reported to have said: “Killing a believer is a more serious matter in the sight of Allah than the destruction of the entire world”.⁷⁹ Yet in another tradition: “a suicider would be repeating the suicidal act endlessly in hell and will reside in hell forever.”⁸⁰ In view of this, Shaykh Tahir-ul- Qadri emphasized on the peaceful method and means to be used for social and political struggle in bringing a change, rather than the violent means.⁸¹ He made reference to a Hadith that says: “Whoever amongst you witnesses an evil, let him reform it [practically] with his hand; if he is unable, then [let him denounce it] verbally; and if he is unable, then [let him abhor it] in his heart, and that is the weakest form of faith [*Iman*].”⁸²

In conclusion therefore, despite all the divergent opinions of *mufti*(s) on the legal position of suicide attack as mentioned above, this paper has been able to outline the following points as the determinant factors for examining the legality or otherwise of suicide attack in Islamic law, namely:

- i. The legality of suicidal act in Islam

⁷⁰ A leading Barelvi scholar and Chairman of the moon sighting committee

⁷¹ Munir, M. Op cit, P 78

⁷² A late chief Mufti of Saudi Arabia

⁷³ Munir, M. Op cit, P 73

⁷⁴ Ibid

⁷⁵ Tahir-ul-Qadri, *Fatwa on Terrorism and Suicide Bombings*, Minhaj-ul-Qur’an International, UK, M. (2010), Pp 60-164

⁷⁶ Ibid

⁷⁷ Qur’an 5: 32

⁷⁸ Qur’an 85:10

⁷⁹ Al Nasa’i in Al- Sunan, Kitab Tahrim al dam [the book on the prohibition of bloodshed], Ch: the sanctity of blood, 7: 82-83, 3988- 3990

⁸⁰ Isma’il, al Bukhari, *Sahih Al Bukhari*, Dar Al Shanun, Istanbul, Vol.3, (1992), P 32, cited in Munir, M. Op cit

⁸¹ Tahir-ul-Qadri, M. (2010), Op cit Pp 399-413

⁸² Muslim Ibn Hajjaj. *Sahih Muslim*, Kitab Al-Iman [the book of faith] Ch: the act of forbidden evil is a part of faith, 1:69, 49, cited in Tahir-ul-Qadri, M. (2010), Op cit Pp 399-413

- ii. Distinction between a heroism warfare and a suicide
- iii. Target of the attack
- iv. Compliance with the basic Islamic rules of conduct of hostilities

Firstly, it is generally accepted by Islamic jurists that one should not kill himself/herself (i.e one should not commit suicide),⁸³ because life of a human being is sacred and no one shall take it except Allah.⁸⁴ Generally, any act of suicide is unlawful in Islam including any act carried out as a result of such an unlawful act or leading to an unlawful act. However, if it has been carried out in a manner that is allowed by some jurists, then it may cease to be a suicide but a warfare tactic (heroism); this is indeed a weak position. The explanation of this will be canvassed in the next point.

Secondly, the legality of suicide attack depends on whether the act itself is suicide or heroism. A suicide can be referred to as a killing of oneself on account of anger, pain or some other worldly motives.⁸⁵ Whereas, heroism on the other hand, is a method or tactic used by some soldiers or combatants during war, which may be resulted to their death.⁸⁶ The key distinction between the two is that, the term suicide is an act of self killing to be committed by a person (civilian) during peace time or even during war provided that it is not targeted at military objectives. Whereas, heroism is a self sacrifice attack which can be made by a soldier during war against military objectives, knowing fully he may be killed or most likely be died for the consequence of his action.⁸⁷ Thus, the former (suicide) is forbidden under shari'ah while the latter (heroism), although it is discouraged but justified according to the opinions of some Muslim jurists.

Thirdly, for a suicide attack to be lawful, it must be directed against military objectives. Thus, no attack (suicide or indiscriminate attack) on civilians (innocent civilians who do not participate directly or indirectly in hostilities) shall be allowed and legitimized under Shari'ah.⁸⁸ This position is similar to that of International humanitarian law, which provides that: civilians and their objects, civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. This include attacks in which, its direct objective is the civilian population generally or individual population generally or individual civilians, or attacks that fail to distinguish between civilians and combatants and between civilian objects and military objectives.⁸⁹

⁸³ Qur'an 4: 29-30 where the Almighty Allah says: "...And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you." "And whoever commits that through aggression and injustice, We shall cast him into fire, and is easy for Allah."

⁸⁴ Muhammad Ibn Isma'il, *Sahih Al-Bukhari*, Dar Al-Shanun, Istanbul, Vol. 3, (1992), P 32

⁸⁵ The Islamic Ruling on the permissibility of Martyrdom operations, available at <http://www.religious.com/martyrdom>, accessed on May 3, 2013

⁸⁶ Munir, M. Op cit, P 80 especially the opinions of The Maliki jurists such as Al Qasam Jbn Mohammad, Ibn Al Majshoon and Ibn Kuwaiz

⁸⁷ Ibid

⁸⁸ See Maududi, S. A. A; *The Meaning of the Qur'an, Arabic Text with Translation and Commentary*, Rendered into English by Ch. Muhammad Akbar, Edited by A. A. Kamal, (London, Vol. 1), Pp. 146-147 where he said: Muslims are warned not to launch an attack against those who are neither opposition nor hinderers of work. The Prophet said, Muslims should refrain from barbaric methods in warfare and from doing any kind of injury to civilians and their objects

⁸⁹ See Article 51(1) of the Additional Protocol I. See also Amnesty International, Without Distinction: Attacks on Civilians by Palestinians Armed Groups- Amnesty International Reports of the 11th July, 2002, Op cit available at <http://www.jewishvirtuallibrary.org/jsource/peace/amnesty.html>, on the 1st of November, 2010

Fourthly, apart from the aforementioned conditions (i.e. military target in an ongoing war), for a suicide attack to be considered as heroism shall comply with the basic Islamic rules of conduct of hostilities such as desisting from mutilating death bodies and avoidance of committing treachery and perfidy. To this end, the Prophet (s.a.w) was reported to have said:

“O son of Awf! Take it (the banner). Fight you all in the path of Allah and combat those who do not believe in the path of Allah. Yet never commit breach of trust, nor treachery, nor mutilate anybody nor kill any minor or woman. This is a demand of Allah and the conduct of his messenger for your guidance”.⁹⁰

6. IS SUICIDE ATTACK MARTYRDOM?

The issue whether or not suicide attack can be considered as martyrdom is a question of both facts and law, which could also be deduced from the previous discussion. In fact, in answering this question, a consideration should be made to the following issues:

- i. the meaning of martyrdom in Islam
- ii. the legality of the specific act of the attacker in Islamic law
- iii. the intention or motive behind the attack
- iv. the benefit of the attack to the religion or Muslim community (*Ummah*)

Firstly, in order to consider whether suicide attack is part of the self sacrifice (martyrdom) or can be construed as martyrdom in shari’ah, there should be a need to examine what the actual meaning of martyrdom entails. Does it really accommodate suicide attack as one of its components or not. From the earlier definitions, it can be understood that martyrdom could either be a self sacrifice in the course of *jihad* (just war) against enemies of Islam in order to defend the religion⁹¹ or it could be spiritual struggle in the course of Allah by way of self discipline.⁹² This implies that for a person to attain the status of a martyr in war should sacrifice himself only to a “just war” for the purpose of defending Islam,⁹³ otherwise it cannot be recognized as self sacrifice (martyrdom) within the realm of shari’ah. Secondly, the legality of the specific act of the attacker also matters in determining whether or not suicide attack can be considered as martyrdom. That is to say, for an attack to be considered as an act of self sacrifice (martyrdom) under shari’ah, it shall be heroic in nature and it shall be the last option to have been taken. It shall be committed in the course of war and directed only to the military targets or objectives.⁹⁴ Failure to comply with these

⁹⁰ Related by Imam Malik. See Jalal-u-din al-Sayuti, *Tanweer Al-hawalik, Sharh a’la Muwatta’ Malik*, (Al-Halabi Press, Cairo (nd), Vol. II) P. 6 also Imam Shaukhani; *Nail- al – Awtar, Ansar Al-Sunnah Al-Muhammadiya*, (Lohore (nd) Volume 7), P. 246 See also Muslim bn Hajjaj, *Sahih Muslim*, Book 19, Hadith Number 1357, also cited in Al- Zuhaili, W; ‘Islam and International Law’, (Volume 87, Number 856, June 2005) International Review of the Red Cross, P.28 also Sabiq, S. Op cit P. 69 also cited in Munir, M; ‘Suicide Attacks and Islamic Law’, (Vol. 90. No 869, March 2008), International Review of the Red Cross, P. 83

⁹¹ The Islamic Ruling on the permissibility of Martyrdom operations, available at <http://www.religious.com/martyrdom>, accessed on May 3, 2013

⁹² Brokaan (July 2010). “Martyrdom for Allah the holy Warriors of Islam”, available at <http://www.islam.watch.org>, accessed on May 3, 2013

⁹³ For example: war as a result of self defense; under the pious Islamic leader; after fulfilling of all the pre requisite requirements for the conduct of jihad as mentioned in the paper. See page 6 above

⁹⁴ Bennoune, K. (1994). “Assalamu Alaikum? Humanitarian Law in Islamic Jurisprudence”, *Michigan Journal of International Law, Vol. 15, No.2 (MICH. J. INT’L.)* Pp.628-629, see also Munir M. Op cit Pp 84-85

conditions, the act could be considered as an unlawful act of suicide, treachery or perfidy.⁹⁵ Thirdly, for a suicide attack to be recognized as martyrdom, the attacker's motive and intention should be centered on the protection of the religion and sovereignty of the Muslims community otherwise it could turn to be a mere futile exercise.⁹⁶ Fourthly, for a suicide attack to be considered as martyrdom operation, it should be considered as last option to be used in self-defense; it should not also violate the rules governing the conduct of hostilities; it should be committed in the course and for the purpose of defending the religion and Muslim community.⁹⁷

7. CONCLUSION

From the above discussion, it has been revealed that the concept of martyrdom (*shahādah*) can be attained spiritually but not necessary in war or violent manner. The one to be attained spiritually through the self struggle (*Jihad An-Nafs*) is termed as the greatest struggle (*Jihad Al-Kubra*) and is indeed a self sacrifice. Similarly, for a martyrdom to be attained during war, it shall be in accordance with the dictates of Shari'ah. All *muftīs* have agreed that suicide *simpliciter* is a self murder and therefore prohibited in Islam. However, according to some jurists, suicide attack may be considered as self sacrifice if such is committed in the course of war and against the military targets, for it is just a mere warfare tactic. However, this position is condemned by the majority of Muslim jurists, as it does not portray the true reflection of Islam which is known to be the religion of peace. To this end, the paper concludes based on appraisal of the authorities and opinions of the *muftis* that suicide attacks on civilians are distinct from the heroic warfare, and is therefore termed as murder under shari'ah.

Indeed, it still remains a controversial issue in Islamic jurisprudence to determine who is actually a civilian, what qualifies a person to become a civilian and to what extent can a person forfeit his civilian status? In fact these are fundamental issues expected to be clarified in examining whether or not an attack is said to have been directed to military or civilian target. In view of this, the paper recommends that the Organization of Islamic Corporation (OIC) through its International Fiqh Academy should come up with harmonious verdicts (*fatawa*) for the purpose of tackling this menace (suicide attacks) in the society. This could be done only when resort has been made objectively to the basic sources of shari'ah (i.e the Qur'an and Sunnah); and also when the religion and public interests (*masalih al mursalah*) have been put into cognizance while making any decision or interpretation; thereby weighing the benefit (*maslahah*) and wrong (*mafsadah*) that it may cause to the religion and the community.

⁹⁵ Qur'an 4:29-30: "...And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you." "And whoever commits that through aggression and injustice, We shall cast him into fire, and is easy for Allah.", see also Tahir-ul-Qadri, M. (2010), Op cit P 58, see also Munir M. Op cit P 82

⁹⁶ The Islamic Ruling on the permissibility of Martyrdom operations, available at <http://www.religious.com/martyrdom>, accessed on May 3, 2013. To this end, The Prophet (PBUH) was reported to have said in a Hadith that action must be judged according to the intention (Sahih al Bukhari and Muslim, cited in Arbaun al Nawawi, Hadith No. 1).

⁹⁷ Ibid