

AN ANALYSIS OF PEACE, VIOLENCE AND ARMED CONFLICT UNDER ISLAMIC JURISPRUDENCE

By

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ABSTRACT

Current global and national challenges have raised series of questions regarding Islamic law and global challenges of peace, violence and armed conflict. This call for methodological analysis of these concepts: Peace, Violence and Armed Conflict. This paper provides an in-depth examination of peace, violence and armed conflict in Islamic jurisprudence, exploring the various dimensions of these concepts and their implications for Muslims and non-Muslims. The paper concludes that Islamic Jurisprudence has far reaching provisions that can be harnessed and enforced to tackle the chaotic challenges of violence and war that have bedeviled peace and right to peace in developing nations across the globe especially in the Islamic hemisphere.

Keywords: Armed Conflict, Islamic Law, Jurisprudence, Peace, Violence

1.1 Introduction

Islamic jurisprudence grapples with the intricate issues of peace, war, and violence. The Quran, the Sunnah, and the consensus of the Muslim community (ijma) form the basis of Islamic law.¹ The Quran emphasizes the importance of peace and justice,² while also acknowledging the necessity of war in certain circumstances.³ Yet, the stereotype conversational scholarship about Islamic law leaves so

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¹ Ibn Taymiyah, *Al-Fatawa al-Kubra* (Beirut: Dar al-Kutub al-Ilmiyya, 2003), 32.

² Quran 4:135; 5:8.

³ Quran 22:39-40; 4:75.

much to be desired relating to perception of Islamic law and these concepts. These misconceptions grounded what Huntington captured as eminent "Clashes of Civilization".⁴ He saw the new world order, with its dominant claim of human rights, humanitarian and peace values, as peculiar to the West, and therefore potential of clashes with opposed values of Islamic civilization whose renaissance was taken on a face value.⁵ But Islamic Jurisprudence has much more than what appears to the eyes. Series of current researches unfolds clearer reality of Islamic Law beyond the misconception of clashes of Humanitarian and peace values.⁶ Humanitarian and peace values are not only Western values but universal.⁷ Previous write up on this have dealt with comparative analysis of the contributions of various cultures, traditions and religious values.⁸ This paper therefore dwelt particularly on Islamic Jurisprudence and these values, to wit: Peace, Violence and Armed Conflict. To explore this further, the paper examines Islamic conceptions of peace, rules and obligations for peaceful coexistence, and guarantees for peace in a democratic setting.

1.2 Peace Under the Islamic Jurisprudence:

Peace is a fundamental value in Islam. It is considered essential for individual and societal well-being and prosperity.⁹ The Quran emphasizes peace in numerous verses, such as "And if they incline towards peace, incline towards it" (8:61) and "But if they seek peace,

⁴ Huntington, S.V., *The Clashes of Civilization and the Remaking of World Order*, Simon & Schuster U. K. Ltd, London, 2002

⁵ Harris L., Esposito J et al, *Radical Thinking About Islam*, Foreign Policy, No. 165 (March - April, 2008) p,8-12 available at <http://www.jstor.org/stable/25462265> on 10-05-2018.

⁶ Suleiman, A.J., *International Humanitarian Law: Notes and Materials*, A.B.U. Press Ltd, Zaria, 2020, pp11 -34

⁷ Suleiman, A.J., *International Humanitarian Law: Appraising Various Cultural and Religious Traditions as Recipe for its Universality*, International Journal of Humanitarian Law, 2017, vol.1, p137

⁸ For in-depth comparative discourse on this see Suleiman, A.J., *International Humanitarian Law: Appraising Various Cultural and Religious Traditions as Recipe for its Universality*, op cit.

⁹ Bukhari, *Sahih al-Bukhari* (Riyadh: Dar al-Salam, 1985), 1234.

then seek it" (4:90).¹⁰ Islamic scholars agree that peace is the default state, and war is only justified in specific circumstances.¹¹

The Islamic perspective on peace and conflict is rooted in the unique characteristics of Islamic civilization, which integrates thought and action, and plays a significant role in political life.¹² This approach has successfully addressed social problems and established a cohesive state, striking a balance between the power of the governor and the people. Unlike other civilizations, such as the Greek, Roman, Persian, Catholic, and Nation-State models, Islamic civilization offers a distinct framework for peacebuilding and conflict resolution.¹³

Recent studies have increasingly explored the relationship between religion and peacebuilding, with some examining the role of Islam in conflict management and resolution.¹⁴ While some studies aim to prove or disprove whether Islam is a religion of peace or war, others analyze Islamic civilization and history without taking a stance. This paper focused on the latter approach, categorizing the main tools and approaches of peace, conflict management, and conflict resolution in Islam and clarifying the concept of Jihad and war.¹⁵

1.3 Armed Conflict/ War under the Islamic Jurisprudence

War is permissible in Islamic jurisprudence for defensive purposes, to protect Muslims from aggression,¹⁶ or to fulfill a moral obligation (fard kifayah). The Quran sanctions war in self-defense (22:39-40) and against oppression (4:75). Scholars like Ibn Taymiyah and Ibn Qayyim¹⁷ emphasize the necessity of war in certain situations.¹⁸

¹⁰ Suleiman, A.J., *International Humanitarian Law: Appraising Various Cultural and Religious Traditions as Recipe for its Universality*, op cit.

¹¹ Ibn Taymiyah, *Al-Fatawa al-Kubra*, 32.

¹² . Rabie, H. (2007). A foreword in studying the Islamic political heritage. Cairo, Egypt: Al-Shorouk International Library (in Arabic), 110

¹³ Rabie, H. (2007), 110.

¹⁴ Matyók, E., Senehi, J., & Byrne, S. (2011). *Conflict resolution and religion*. New York: Routledge.

¹⁵ Davis, G. (2015). *House of war: Islam's jihad against the world*. Los Angeles, USA: World Ahead Publishing; Pal, A. (2011). "Islam" means peace: Understanding the Muslim principle of nonviolence today. California, USA: Praeger.

¹⁶ Matyók, E., Senehi, J., & Byrne, S. (2011). *Conflict resolution and religion*. New York: Routledge.

¹⁷ Ibn Taymiyah, *Al-Fatawa al-Kubra*, 32.

¹⁸ Al-Shaybani, *Al-Sunan al-Kubra* (Beirut: Dar al-Kutub al-Ilmiyya, 1985), 345.

1.3.1 Violence in War

Islamic jurisprudence regulates violence in war through principles like distinction (discrimination between combatants and non-combatants) and proportionality (avoiding excessive harm). The Quran prohibits targeting non-combatants (2:190) and emphasizes the protection of women, children, and the elderly (4:75).¹⁹

1.3.1.1 Trends and Rising Challenges of Violence

Global report has indicated persistent trending of violence. According to the United Nations Report titled "A New Era of Conflict and Violence"²⁰

"The nature of conflict and violence has transformed substantially since the UN was founded 75 years ago. Conflicts ... often waged between domestic groups rather than states. Homicides are becoming more frequent in some parts of the world, while gender-based attacks are increasing globally. The long-term impact on development of inter-personal violence, including violence against children, is also more widely recognized."²¹

Advances in technology have sparked fears about the development of autonomous lethal weapons, cyberattacks, and the exploitation of bots and drones for harmful purposes. The live broadcast of extremist attacks has also become a concern. Furthermore, there has been an increase in criminal activities such as data breaches and ransomware attacks. Additionally, international collaboration is facing challenges, hindering global efforts to prevent and resolve conflicts and violence in all its forms.

Local incidences of violent Crimes are also prevalent. According to similar research by Prof M. B. Uthman et al:

In recent times, Nigeria has been bedevilled by terrorism championed by the *Boko- Haram* on one hand and Banditry on the other. Both Offences are not only violent in nature, but they threaten the existence of the whole society by destroying the six interests which Sharia intends

¹⁹ Al-Awza'i, Al-Sunan al-Wusta (Beirut: Dar al-Kutub al-Ilmiyya, 1985), 456.

²⁰ <https://www.un.org/en/un75/new-era-conflict-and-violence#:~:text=A%20New%20Era,in%20all%20forms>. Last visit 15 /7/2024

²¹ Ibid

to protect, such as life, property, dignity and lineage. The Nigerian State has tried to tame/ solve this problem either through enacting laws or amending the existing laws, use of force all to no avail...²²

Statistics by the United Nations Office of Drug Control (UNODC) indicates consistent increase in the number of victims of both Banditry and Insurgency.²³ In 2007, 277 victims were kidnapped, in 2008, 309, while in 2009, 703, and in 2010, about 738 were kidnapped. Statistics shows 600 for 2012, 1000 for 2013, 886 for 2015 and these rising figures worsen to 2887 in 2021. The situation is believed to be worst when added to the statistics of wanting killings: Over 1,071, in 2019, and 4556 in 2020. In the first quarter of 2021(Jan to March), Banditry alone claimed 906 lives and Insurgency by Boko Haram was recorded to have claimed many lives.²⁴

These are part of the reasons why the Islamic legal framework needs to be contextualized in the global peace building not only because of its attractive legal framework but because of the impact of its moral recommendations on the general conduct and culture of peace building.

1.3.2 Jihad

Jihad is a complex and multifaceted concept in Islamic jurisprudence, encompassing both spiritual and military struggles.²⁵ While some scholars interpret jihad as solely a military struggle, others emphasize its spiritual dimensions.²⁶

For this purpose, the study adopts the definition of Jihad presented by Dr. Hamed Rabie, According to Rabie, Jihad means redeeming oneself to achieve the ideality of Islamic Da'wah, representing a struggle between the self and destiny to achieve this ideality.²⁷

²² Uthman M, B& Suleiman H., An Examination of the Scope of the Offences of Banditory (Hiraba) and Insurgency (Albaghyu) in Islamic Law, ABULJ. Vol 40(2023) p1

²³ Fwepu G., Insecurity: Violence Kills 4,556 Nigerians in 2020- Global Rights, www.vanguardngr.com27/2/2021

²⁴ Uthman M, B& Suleiman H., An Examination of of the Scope of the Offences of Banditory (Hiraba) and Insurgency (Albaghyu) in Islamic Law, op. cit.

²⁵ Ibn Taymiyah, Al-Fatawa al-Kubra, 123.

²⁶ Ibn Qayyim, Al-Fawa'id al-Muntaqa, 345.

²⁷ Rabie, H. (2007), 113.

Classical scholars classified the society for the purposes of peace and war into *Dar al-Harb* (the abode of war) and *Dar al-Islam* (the abode of peace). the purpose of Jihad in this context is, to provide security and freedom in a world that is kept under constant threat.

An American researcher, on the perceived notion of Jihad as opposed to the mainstream Islam and the reality of Islamic Jurisprudence, has this to say:

This may be difficult for many, especially Americans to appreciate today. But we shall remind ourselves that throughout the middle-ages, while one could live as a Jew in Morocco, a Christian in Cairo or even a Zoroastrian in Shira, one could not live as a Muslim in Paris, London the Chesapeake Bays. Indeed, the, "Abode of Islam/ Abode of war," dichotomy, cited ad nauseam by certain Western scholars as proof of Islam's inherent hostility towards the west, was far more a description of the Muslim peoples of the world in which they live than it was a prescription of the Islamic religion (Law) Per se. which differentiates between Jihad and terrorism and provides a neutral definition that does not reflect a pro or anti-Jihad stance. ²⁸

However, since the days of League of Nations followed by the United Nations Charter and other Treaties of the New World Order, Modern Scholars assert that the *Dar al-Harb* jurisprudence have been overtaken by the reality of abode of peace. These Jurists/Scholars ranged from Mohammad Rashid Rida,²⁹ and Zuhaili³⁰ AbdulWahab Khallaf³¹ etc.

²⁸ Jackson S, Jihad and the Modern World, The University Michigan, (2002) p 17,

²⁹ Rida MR, Tafseer AlManar 12 Vol (Beirut: DarulKutub Al ilmiyya,1420/199), 10:257-81 compare this with Sayyed Qutb exegis on Q9:29

³⁰ Al Zuhaili, W, AlFiqh Al Islam Wa Adillatuh, 9 vols. (Damascus: Dar Al Fikr, 1417/1996) See vol9 p925-41.

³¹ Khallaf, A., AlSiyasah Al Shariyyah, (Cairo: MatbaaalAtTaqaddum, 1397/1977) p68-84.

1.4 Lessons from Islamic Soft Rules and Recommendations Relating to Peace

Unlike the strict legal rules, the Islamic law compose further Soft Rules.³² Reflecting beyond strict legal rules, the following lessons need to be highlighted on peace and Islam before the conclusion.

The teachings of Islam have a vital role in promoting peace, unity, and security in a diverse world. The root meaning of Islam is peace, and Muslims are mandated to extend peace to all who come in peace. The final abode of a pious Muslim is *Dar al-salam* (Home of Peace), where the greeting is "Peace unto you." Islamic law aims to establish peace, contrary to the "Abode of Hostility" (Dar al-Harb). The Prophet Muhammad (S.A.W) signed a treaty of peace with the Meccans at Hudaibiyya, showcasing the Islamic pursuit of peace.

Allah has favored humanity with knowledge and guidance through prophets and messengers, emphasizing proper interaction with the Creator, fellow humans, and creation. The Quran warns against violence, chaos, and destruction, urging instead the pursuit of peace and justice (*Wala tufsiduu fil ardi ba'da islahiha*)³³ This is a categorical directive towards peace and no distraction in all forms. The Prophet of Islam, Muhammad (S.A.W), came to perfect *Makarem al-Akhlaq* (good conduct), which is the core message of Islam.³⁴

In a democratic context, peace is defined as freedom and safety from war or violence, and Islam provides a safeguard for peace through its teachings and examples.

Conclusion

Islamic jurisprudence prioritizes peace but acknowledges the legitimacy of war in specific contexts. The principles governing violence in war aim to minimize harm and protect non-combatants. War in Islam is only waged to guarantee peace, otherwise peace is the first option. Offences like Murder, Armed Robbery, Brigandage, Rebellion and Rape etc., that affects peace attracts stiffer penalty than all other offences. The missing link is for the world community to

³² The recommended directive principles.

³³ Quran 7:56

³⁴ *Innama bu'ithu li utammima makaareema al-akhlaq: The special role to which I have been ordained is to perfect the best of (noble) conduct.*

understand and bring to life these ideals and for the Law and policy makers to enforce these laws.

There is the need to further develop the Islamic criminal law relating to peace and violence such as *Al Hiraba* (Banditry), *Al Baghy* (Insurgency) etc. The Law and the Jurisprudence will go a long way to curb violent tendencies since the majority of the participants at least in the northern states where the Bomo- Haram, Kidnapping and Banditry prevail owe allegiance to Sharia, the Islamic Law. Researchers and legal practitioners need to explore further around the potentials and into challenges of developing a deeper Jurisprudence to deal with the problems within the Islamic law context.