

## **A STUDY OF WAR CRIMES IN ISLAMIC CRIMINAL LAW**

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*A war crime is a violation of the laws of war. The idea of war crimes developed mainly at the end of the 19th century and start of the 20th century, when international humanitarian law, also recognised as the law of armed conflict, was codified. War crimes include mutilation, torture, murder, killing or inhuman treatment of prisoners of wars, and intentionally directing attacks against civilians. Islamic criminal law is the criminal law in accordance with Sharia based on the Quran and the Sunnah. Islam has given rights to justice, fair trial, protection against torture, dignity, life, and privacy. In Surah Muhammad, instructions in case of the war and treating the enemies are given. The life of the Prophet Hazrat Muhammad (SAW) reflects on treating enemies in case of war. Ghazwa-e-Badr, the Treaty of Hudaibiyya, and the Conquest of Makkah are remarkable examples of dealing with war crimes in Islam. This qualitative study is aimed at exploring the war crimes in Islamic criminal law. Document analysis is used here as the research method. By using the interpretivist paradigm, criminal law in Islam in case of war crimes is highlighted in this research study. The present study is noteworthy from the perspectives of Islamic Jurisprudence, Islamic Studies, Islamic criminal law, international relations, human rights, Legal Studies, political science, sociology, and psychology.*

### **Introduction**

A war crime is a violation of the laws of war. The idea of war crimes developed generally at the end of the 19th century and the beginning of the 20th century, when international humanitarian law, also acknowledged as the law of armed conflict, was codified. War crimes comprise of mutilation, torture, murder, killing or inhuman treatment of prisoners of wars, and intentionally directing attacks against civilians. This research is aimed at studying the

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Islamic criminal law for war crimes. Islamic criminal law is the criminal law in accordance with Sharia based on the Quran and the Sunnah. Islam has given rights to justice, fair trial, protection against torture, dignity, life, and privacy. Instructions in case of the war and treating the enemies are given in Surah Muhammad. The life of the Prophet Hazrat Muhammad (SAW) reflects on treating enemies in case of war. Ghazwa-e-Badr, the Treaty of Hudaibiyya, and the Conquest of Makkah are remarkable examples of dealing with war crimes in Islam.

This qualitative study is aimed at exploring the war crimes in Islamic criminal law. The present study is noteworthy from the perspectives of Islamic Jurisprudence, Islamic Studies, Islamic criminal law, international relations, human rights, Legal Studies, political science, sociology, and psychology.

### **Literature Review**

There is a review of the execution of the Islamic Criminal Law in the developing Muslim States grounded on its development and challenges in a study.<sup>1</sup> The author has compared criminal court system in Western and Islamic states.<sup>2</sup> This study discusses the development and the recent cases of Islamic criminal law in the Muslim states of Egypt, Palestine, Tunisia, Maldives, and Sudan.<sup>3</sup> The criminal law of mainly Muslim states is built on modern contemporary criminal codes and an extreme case of jurist law has been signified through numerous Muslim criminal rules which define Islamic criminal law to be formed and developed by the private religious experts as jurist law.<sup>4</sup> The study concludes that the Islamic criminal law is certainly rooted in the revelations to guarantee dignity and appreciation of human life values.<sup>5</sup>

Another study theoretically examined and found that the Islamic Criminal Justice System (ICJS) plays an important role in protecting the society and for the welfare of humanity.<sup>6</sup> ICJS works for each individual that is living in this world and it safeguarded the human rights in all manners.<sup>7</sup> In the Islamic Criminal law, punishment is also declared to prevent any violation of the law.<sup>8</sup> One researcher elaborated the penological approach of punishment

in Islamic criminal law.<sup>9</sup> This study applied a comparative analysis centered on the qualitative approach to compare the idea of punishment and its justification in the modern penology and also in Islamic perspective.<sup>10</sup> The study discovered that the justification for punishment in Islam primarily contained in the hudud and qisas offenses does not depart from the modern penology.<sup>11</sup> Islamic law offers harsher punishment for grave offenses but at the same time it recommends as well means to decrease such punishments.<sup>12</sup>

### **Islamic Criminal Law as Regards Warcrimes**

Islam is the religion of humanity and takes account of the basic human rights. Its criminal law is derived from the human rights given to the mankind by Allah (SWT).

#### ***Humanitarian Laws in Islam***

Islam envisaged these fundamental human rights: Right of Life, Right of Honour, Right of Property, Rights of disabled and down-trodden people, Rights of Women, Economic Justice, Right of Equality, No prejudice on the basis of colour or creed, Right of “Shura” (Mutual Consultation), Right of Liberty, Right of privacy, Right of protection against oppression, Right of freedom of expression, Religious Rights, Right of assembly, etc., Labour Rights, and Rights of Children.<sup>13</sup>

#### ***Rights of Prisoners of War in Islam***

History indicates that prisoners of war have been “the victims of the worst imaginable forms of human cruelty”.<sup>14</sup> Islam’s stance on the treatment of prisoners of war is evident in the Quran where the qualities of a virtuous man are defined as, “And they feed for the love of God, poor, the orphan and the prisoner.”<sup>15</sup>

Islam gives excessive importance to manners during a battle.<sup>16</sup> The Prophet (PBUH) had also given clear instructions for good treatment of prisoners of war.<sup>17</sup> In the Islamic history, the first group of prisoners ever taken captive was in the Battle of Badr, which was fought between the Muslims and the pagans of Makkah in 624 AD.<sup>18</sup> Nearly all of the 70 Makkans who were arrested in

that war were set free with or without ransom.<sup>19</sup>

Ibn Ishaq, an early biographer of the Prophet (PBUH), wrote while quoting a prisoner of war “When they ate their morning and evening meals they gave me the bread and ate the dates themselves in accordance with the orders that the Prophet had given about us. If anyone had a morsel of bread he gave it to me.”<sup>20</sup> A prisoner should not be “coerced into renouncing his religion” and he should be “invited to Islam and given the choice to accept or reject the call.”<sup>21</sup>

In the Quran, it is stated: “O Prophet! Say to those who are captives in your hands: ‘If Allah finds any good in your hearts, He will give you something better than what has been taken from you and He will forgive you. For Allah is Oft Forgiving, Most Merciful.’”<sup>22</sup> Muslims are ordered to treat prisoners of war with kindness and prisoners cannot be abused because of the fact that they were fighting against the Muslims.<sup>23</sup> There is no Islamic law that allows punishment for a prisoner for the reason of his faith.<sup>24</sup>

### *Ghazwa-e-Badr*

In Ghazwa-e-Badr, seventy people of the Quraish were made prisoners. The ransom for the prisoners was set “according to the prisoner’s financial status i.e. between 1000 and 4000 dirhams. Interestingly enough the ransom also had an educational dimension.”<sup>25</sup> Most of the Makkans, unlike the Madinese, were literate and hence every prisoner who could not afford the ransom was assigned ten children to teach them writing and reading.<sup>26</sup> Once the child was skilful enough, the trainer would be set free.<sup>27</sup>

### *Hudaibbiya Treaty*

Outwardly, it was a contract against the wishes of the Muslims, but later on it turned out to be a great victory for Muslims.<sup>28</sup> The Prophet Hazrat Muhammad (SAW) indicated extreme patience by accepting all terms of Hudaibbiya Treaty as dictated.<sup>29</sup> It was one of the most exceptional events and a great victory of the Prophet Hazrat Muhammad (SAW) and it also proved to be a turning point in the Islamic history because after the peaceful armistice at

Hudaibiyah, Islam increased in leap and bounds, Muslims had full liberty to preach Islam, and three battles of Quraish against Muslims were lost.<sup>30</sup>

### ***Conquest of Makkah***

After the conquest of Makkah, the Prophet Hazrat Muhammad (SAW) “neither took any revenge nor let others harm anyone” and an “open amnesty was announced for everyone”.<sup>31</sup>

### **Islamic Law of War**

The Islamic law of war seeks to “humanize armed conflict by protecting the lives of non-combatants, respecting the dignity of enemy combatants, and forbidding damage to an adversary’s property except when absolutely required by military necessity or when it happens unintentionally, as collateral damage.”<sup>32</sup>

Islam teaches the manner of fighting with the enemies. In the Quran, it is ordained, “So when you meet the disbelievers (in battle), strike (their) necks until you have thoroughly subdued them, then bind them firmly. Later (free them either as) an act of grace or by ransom until the war comes to an end. So will it be. Had Allah willed, He (Himself) could have inflicted punishment on them. But He does (this only to) test some of you by means of others. And those who are martyred in the cause of Allah, He will never render their deeds void.”<sup>33</sup>

The core principles of Islamic international humanitarian law are as follows:

#### **1. Protection of civilians and non-combatants**

Islamic law makes it profusely clear that all fighting on the battlefield must be directed only against enemy combatants.<sup>34</sup> Civilians and non-combatants must not be purposely harmed during the period of hostilities.<sup>35</sup> According to the Quran, “And fight in the way of God those who fight against you and do not transgress, indeed God does not like transgressors.”<sup>36</sup>

#### **2. Prohibition against indiscriminate weapons**

So as to “preserve the lives, and the dignity, of protected civilians and non-combatants” - and despite the fact “the weapons used

by Muslims in the seventh and eighth centuries were primitive and their destructive power limited. Classical Muslim jurists discussed the permissibility of using indiscriminate weapons of various kinds, such as mangonels (a weapon for catapulting large stones) and poison-tipped or fire-tipped arrows.<sup>37</sup> In the words of the Quran, “For that We have decreed upon the children of Israel that whosoever kills a human soul except in retribution of committing fasâd (destruction, damage) in the land, it shall be as if he killed all of humanity, and whosoever saves it [a human soul] it shall be as if he saved all of humanity.”<sup>38</sup>

### **3. Prohibition against indiscriminate attacks**

Driven by the same concerns that led them to inspect “the rightness of using mangonels and poison-tipped or fire-tipped-arrows (means of warfare), classical Muslim jurists also discussed the permissibility of two potentially indiscriminate methods of warfare that could result in the killing of protected persons and damage to protected objects: al-bayât (attacks at night) and al-tatarrus (the use of human shields).<sup>39</sup>

### **4. Protection of property**

Islam has provided the right to property. In the Islamic ideology, “everything in this world belongs to God, and human beings — as His vicegerents on earth — are entrusted with the responsibility of protecting His property and contributing to human civilization. Hence, even during the course of hostilities, wanton destruction of enemy property is strictly prohibited.”<sup>40</sup>

### **5. Prohibition against mutilation**

Islamic law sternly forbids mutilation.<sup>41</sup> The instructions of the Prophet (PBUH) on the use of force contain these injunctions: “do not steal from the booty, do not betray and do not mutilate.”<sup>42</sup> The Prophet (PBUH) also taught Muslims to avoid intentionally attacking an enemy’s face.<sup>43</sup> The written instructions of Hazrat Abu Bakr (RA) to the governor of Hadramaut, Yemen, encompassed the following: “Beware of mutilation, because it is a sin and a disgusting act.”<sup>44</sup> Such respect for human dignity entails that “dead enemy soldiers be buried or their bodies handed over to one’s adversary after the cessation of hostilities.”<sup>45</sup> Early Islamic historical

and legal literature has recorded that the Prophet (PBUH) had “the bodies of dead soldiers buried without asking whether they belonged to the Muslim army or its adversaries.”<sup>46</sup> The Andalusian jurist Ibn \$azm (d. 1064) had stressed that Muslims had a responsibility to “bury the dead bodies of their enemies and that failure to discharge this obligation was tantamount to mutilation.”<sup>47</sup>

#### **6. Treatment of prisoners of war**

As for the treatment of prisoners of war, Islamic law needs that they be respected and treated humanely and they must be “fed and given water to drink, clothed if necessary, and protected from the heat and the cold and from cruel treatment.”<sup>48</sup>

#### **7. Safe conduct and quarter**

The subject of “amân (safe conduct and quarter)” provides many fascinating insights into the Islamic law of war and “Amân, in the sense of safe conduct, refers to the protection and specific rights that are granted to non-Muslim nationals of an enemy State who are temporarily living in or making a brief visit to the Muslim State in question for business, tourism, education or other peaceful purposes.”<sup>49</sup>

### **Findings and Conclusion**

The research findings of this study reveal that Islamic criminal law is based on humanitarian grounds. Human dignity and respect is valued irrespective of race, colour, creed, gender, and nationality. Islamic war laws take account of the fundamental human rights. There is protection of civilians and non-combatants, protection of property, human treatment of prisoners, safe conduct and quarter, prohibition of mutilation, and prohibition against indiscriminate weapons and attacks.

#### ***Notes***

- 1 Hajed A. Alotaibi, “The challenges of execution of Islamic criminal law in developing Muslim Countries: An analysis based on Islamic principles and existing legal system,” Taylor & Francis Online, Cogent Social Sciences, 2021, Vol. 7, No. 1. <<https://www.tandfonline.com/doi/full/10.1080/23311886.2021.1925413>> (Accessed on 17 March 2022).

- 2 Ibid.
- 3 Ibid.
- 4 Ibid.
- 5 Ibid.
- 6 Babar Ali Siddique, Muhammad Zahid Rafique Rana and Muhammad Azeem, "Islamic Justice System with Special Reference to Human Rights", *Journal of Social Sciences and Humanities Studies*, 2019, Vol.5, No. 5, pp. 1-7. <[https://www.researchgate.net/publication/339443151\\_Islamic\\_Justice\\_System\\_with\\_Special\\_Reference\\_to\\_Human\\_Rights](https://www.researchgate.net/publication/339443151_Islamic_Justice_System_with_Special_Reference_to_Human_Rights)> (Accessed on 17 March 2022).
- 7 Ibid.
- 8 Ibid.
- 9 Marli Candra Ramli, "The Penology of Islamic Criminal Law: Reintroduction of Islamic Penology", *AL-'ADALAH*, 2018, Vol. 15, No. 02, pp. 345-366. <[https://www.researchgate.net/publication/334119336\\_The\\_Penology\\_of\\_Islamic\\_Criminal\\_Law\\_Reintroduction\\_of\\_Islamic\\_Penology](https://www.researchgate.net/publication/334119336_The_Penology_of_Islamic_Criminal_Law_Reintroduction_of_Islamic_Penology)> (Accessed on 19 March 2022).
- 10 Ibid.
- 11 Ibid.
- 12 Ibid.
- 13 Liaqat Ali Khan Niazi, *Islamic Way of Life: In The Light of Sirah*, Lahore: Sang-e-Meel Publications, 2001, p. 287.
- 14 Arab News, "Treatment of Prisoners of War in Islam", (22 December 2011) <<https://www.arabnews.com/node/401802>> (Accessed on 22 March 2022).
- 15 Surah Daher: 08.
- 16 Arab News, (2011).
- 17 Ibid.
- 18 Ibid.
- 19 Ibid.
- 20 Ibid.
- 21 Ibid.



- 22 Surah Anfal: 70.
- 23 Arab News, (2011).
- 24 Ibid.
- 25 International Curricula, “The Consequences of the Battle of Badr,” (24 January 2017), <<https://www.iconetwork.com/consequences-battle-badr/>> (Accessed on 22 March 2022).
- 26 Ibid.
- 27 Ibid.
- 28 Abu Tariq Hijazi, “Hudaibiyah: A turning point in the history of Islam”, Arab News, 2012, <<https://www.arabnews.com/hudaibiyah-turning-point-history-islam>> (Accessed on 22 March 2022).
- 29 Ibid.
- 30 Ibid.
- 31 Ramesh Kumar Vankwani, “Conquest of Makkah”, The News International, (15 May 2020) <<https://www.thenews.com.pk/print/658726-conquest-of-makkah>> (Accessed on 22 March 2022).
- 32 Ahmed Al-Dawoodi, “IHL and Islam: An Overview”, Humanitarian Law and Policy, (14 March 2017) <<https://blogs.icrc.org/law-and-policy/2017/03/14/ihl-islam-overview/#:~:text=Islamic%20law%20makes%20it%20abundantly,during%20the%20course%20of%20hostilities.>>> (Accessed on 22 March 2022).
- 33 Surah Muhammad: 04.
- 34 Ahmed Al-Dawoody, n. 2.
- 35 Ibid.
- 36 Surah Baqarah: 190.
- 37 Ahmed Al-Dawoody, n. 3.
- 38 Al-Maidah: 32.
- 39 Ahmed Al-Dawoody, n. 4.
- 40 Ibid.
- 41 Ibid.
- 42 Ibid.
- 43 Ibid.

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44 Ibid.

45 Ibid.

46 Ibid.

47 Ibid.

48 Ibid.

49 Ibid.



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