PETITA

Jurnal Kajian **Ilmu Hukum dan Syariah**

Contents

COMPATABILITY BETWEEN INTERNATIONAL HUMANITARIAN LAW AND ISLAMIC LAW OR WAR (JIHAD)

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Abstract: This study investigates the matter of the compatibility between International Humanitarian Law and Islamic concept of Jihad. The proponents of the theory of the acceptability of International Humanitarian Law in an Islamic context have been presenting the similarities between International Humanitarian Law and Islam. The opponents have been trying to point out the differences between International Humanitarian Law and Islam, especially on the violent concept of Jihad. This study looks at the theories of the existence or non-existence of a fundamental conflict between International Humanitarian Law and Islam by analysing the views of different schools of thoughts and rules of International Humanitarian Law in the context of Islamic Law of War (Jihad). The lack of the availability of a satisfactory study on the matter provides justification for the present study that aims to address the gap by making an important contribution to the knowledge in this area. The data for this study has been collected by using both primary and secondary sources of data collection. The primary data has been collected through this study. The available literature on the same topic has been collected as secondary data through libraries, books, journals, articles and using the internet sources. The analyses of the data lead us to the point where the relationship between International Humanitarian Law and Islam becomes clear and an assessment is made about the compatibility of International Humanitarian Law with Islam, on the Islamic concept of Jihad, that rejects the existence of a fundamental conflict between International Humanitarian Law and Islam.
Keywords: International Humanitarian Law, Islamic Law of War, Compatibility

Abstrak: Studi ini menganalisis masalah kompatibilitas Hukum Humaniter Internasional dan konsep Islam tentang Jihad. Para pendukung teori Hukum Humaniter Internasional dalam konteks Islam telah menyampaikan persamaan antara Hukum Humaniter Internasional dan Islam. Sementara itu, para penentang hukum ini juga telah berusaha menunjukkan perbedaan antara Hukum Humaniter Internasional dan Islam, terutama pada konsep kekerasan Jihad. Penelitian ini mengkaji teori-teori tentang ada atau tidaknya konflik mendasar antara Hukum Humaniter Internasional dan Islam dengan menganalisis pandangan berbagai mazhab dan aturan Hukum Humaniter Internasional dalam konteks Hukum jihad dalam Islam. Terbatasnya penelitian yang baik berkaitan dengan masalah ini memberikan justifikasi untuk penelitian ini, yang bertujuan untuk menutupi kesenjangan dengan memberikan kontribusi penting untuk pengetahuan di bidang terkait. Analisis data mampu menjelaskan hubungan antara Hukum Humaniter Internasional dan Islam dan menilai kompatibilitas antara Hukum Humaniter Internasional dan Islam, pada konsep Islam tentang Jihad.
Kata Kunci: Hukum Humaniter Internasional, Hukum Perang Islam, Kompatibilitas

Introduction

The matter of compatibility of International Humanitarian Law with Islam has been widely discussed the topic. The different views and approaches towards this topic have made this issue very complexed. There are those who favour the acceptance of International Humanitarian Law in an Islamic context. They focus on the similar natures, purposes and human-friendly rules of International Humanitarian Law and Islamic humanitarian values. On the other hand, there is a section of scholars, mainly the western scholars, who criticise Islamic humanitarian values and present the concept of two separate and distinct civilisations.

The September 11 attacks on the United States and other terrorist attacks in the 21st century provided an opportunity for the critics of Islam to spread the concept of violent and terrorist Islam.[1] It gave birth to an endless hatred discussion upon the Islamic concept of peace and war. The critics of Islamic Law of War, instead of considering the contextual meanings of the Quranic verse, openly started giving generic meanings to the Quranic verse about fighting with non-Muslims. They started spreading the violent version of the Islamic Law of War that orders the Muslims to conduct a military operation against non-Muslims during war and peace situation.[2] They started grilling the scholars who used to present the contextual meanings of the Quranic verse upon the matter of fighting with the non-Muslims.[3] They rejected the argument about the contextual interpretation of the verse and accepted the non-aggressive nature of the Islamic Law of War.[4]

In fact, the debates started in West about Islam as a challenge to humanitarian law and a threat to western civilisation after massive targeting of civilians in spectacular attacks on Madrid, London, Afghanistan, Iraq, and Mumbai. To counter the extremist's distorted interpretations of Islam, the liberal and reformist Muslim scholars elaborated a series of humanitarian standards of Islam. They condemned the extremists deliberate killing of civilians in an indiscriminate fashion and their disrespect for the principle of proportionality due to which several experts, analysts, and policymakers kept labelling Islam as a religion of cruelty and danger for humanitarian values.[5]

In a Joint Statement by the American Muslim Alliance, American Muslim Council, Association of Muslim Scientists and Engineers, Association of Muslim Social Scientists, Council on American-Islamic Relations, Islamic Medical Association of North America, Islamic Circle of North America, Islamic Society of North America, Ministry of Imam W. Deen Mohammed, Muslim American Society and Muslim Public Affairs Council condemned the 9/11 attacks. Per their combined statement:

> 'American Muslims utterly condemn the vicious and cowardly acts of terrorism against innocent civilians. They joined with the Americans to call for the swift apprehension and to punish the perpetrators. Such immoral act could ever assist no political cause'.[6]

1   David S. Margoliouth, Mohammed and the Rise of Islam (3rd edn, The Knickerbocker Press New York 1905)
2   James L. Barton, The Christian Approach to Islam (The Pilgrim Press Boston, 1918)
3   Bernard Lewis 'Islamic Revolution (The New York Review of Books 1998) <http://www.nybooks.com/articles/1988/01/21/islamic-revolution/> accessed 05 December 2016
4   Bashir Maan and Alastair McIntosh, Interview with William Montgomery Watt, Ex Professor of Arabic and Islamic studies at the University of Edinburgh (2000) <http://www.alastairmcintosh.com/articles/2000_watt.htm> accessed 05 December 2016
5   Bernard Lewis, Lewis, Race and Slavery in the Middle East (New York: Oxford University Press New York 1990)
6   Patrick Manning, Slavery and African Life: Occidental, Oriental, and African Slave Trades (Cambridge University Press 1990)

The post 9/11 situation compelled the liberal and reformist Muslim intellectuals to revisit their communication strategy and present the real image of Islam by keeping channels of communication with the West open to remove the image of cruelty and danger for humanitarian values.

Western Narrative on the Concept of Jihad

The criticism of Islamic Law dates back from the early Islamic period. The writings of some Christians of early Islamic period contain criticism of Islam through making a comparison between Islam and Christianity. John of Damascus calls Islamic doctrine a mere hodgepodge culled from Bible.[7] The leading critics of Islam from early Islamic period include Abu Isa al-Warraq, Ibn al-Rawandi and al-Ma'arri.[8] Ibn Kammuna, a Jewish philosopher, severely criticises Islam and considers Islam as incompatible with the principles of Justice.[9] The later periods of Islamic history carry criticism of Islam by Maimonides[10] and David Hume.[11] This criticism changes its mode in an Eighteenth and Nineteenth century. The Hindu politicians, orientalist scholars, historians, and philosophers are noticed criticising various aspects of Islam and Islamic Law.[12] Orientalist David Margoliouth, an Orientalist, argues that the motive behind the battles by Muslims in the early Islamic period was the desire for plunder, especially against Jewish and Meccan tribes who had done nothing against Islam. Per David Margoliouth, the Battle of Khyber was a point when Islam started becoming a threat to the whole world.[13]

The modern era criticises Islam and Islamic Law in the context of its relationship with international laws and the international community. James L. Barton believes that the concept of Sovereignty of God in Islamic seems extreme and unbalanced approach to Islamic Law.[14] Bernard Lewis[15] and William Montgomery Watt[16] raise a question on the primitive nature of Islamic law and its incompatibility with the modern era. Bernard Lewis[17] and Patrick Manning[18] consider the humanitarian reforms of Islamic law, against the enslavement of Muslims, as the reason of massive importation of slaves from inside and outside of the Islamic empire.

An Israeli Islamic Studies scholar Yohanan Friedmann targets the punishment for apostasy under Islamic law. He compares this concept of Islamic punishment with the punishments for apostates given by Sassanids and Byzantines.[19] When it comes to humanitarian treatment, the interpretations of Islamic Law by the critics hold inconsistent with

7   Yohanan Friedmann, Tolerance and Coercion in Islam (Cambridge University Press 2003)
8   Universal Declaration of Human Rights 1948, art 18
9   Ladan Boroumand and Roya Boroumand, 'Terror, Islam and Democracy' (2002) 13 (2) Journal of Democracy 5
10   Ibid
11   Majid Khadduri, The Islamic Nations (John Hopkins University Press, 2001)
12   Laden Boroumand and Roya Boroumand, 'Terror, Islam and Democracy' (2002) 13 (2) Journal of Democracy 5
13   Richard Owen, 'Pope converts outspoken Muslim who condemned religion of hate' (The Times London, 24 March 2008) <http://www.thetimes.co.uk/tto/faith//> accessed 05 June 2014
14   David Cook, Understanding Jihad (University of California Press 2005)
15   DENNIS PRAGER, 'Islam gets a free pass' (14 June 2016) <http://www.nationalreview.com/article/436571/orlando-shooting-left-gives-islam-free-pass> accessed 6 December 2016
16   Wahbeh M. al-Zuhili, 'Islam and International Law' (2005)
17   Al-dawoody, The Islamic Law of War: Justifications and Regulations (Palgrave Macmillan US 2011)
18   James Cockayne, 'Islam and international humanitarian law: From a clash to a conversation between civilizations' (2002)
19   Karima Bennoune, 'As-Salamu Alaykum? Humanitarian Law in Islamic Jurisprudence' (1994) 15 Mich. J.

International Human Rights. The Universal Declaration of Human Rights provides everyone with the right of changing religion. The critics present the restriction on changing religion under Islamic Law as an example of its inconsistency with International Huma Rights.[20]

The Western Liberals consider Islamic and Western systems as rivals. They blame Islam about its intolerant nature toward Western values.[21] The Orientalists considers the concept of Jihad in Islam as a war against Western values.[22] The transitional terrorist groups and their distorted interpretations of Islam provide them opportunities to blame Islam. Furthermore, the fundamentalist's Muslim scholars present the harsh image of the Islamic Law of war. They support the universalization of Islam through violence and favour the establishment of an imperial world state.[23] The Apologist Muslim scholars present the soft image of Islam and try to seek conciliation between Islamic and Western values.[24]

Magdi Allam, an Egyptian-born Italian journalist, considers Islam as a religion that promotes hate and violence.[25] David Cook also believes the Islamic concept of Jihad as violent and rejects the claims of the peaceful concepts of the Islamic Law of War. He criticises the approach of the Muslim writers, in non-Western languages, that promote the violent concept of Islamic Jihad. Per him, the peaceful concept of Islamic Jihad is promoted by the apologist Muslims and Western Muslim scholars, inspired by Sufism or work in interfaith dialogue.[26] Dennis Prager, the columnist, and author refuses to accept the peaceful nature of Islam and criticises the movement of contending Islam "a religion of peace," He considers Islam as a warlike religion that has waged wars throughout the history against non-Muslims at every possible occasion. He considers Islam responsible for the killing of 60 to 80 million non-Muslims during Muslim rule.[27]

Relationship Theory between IHL and Islamic Concept of Jihad
Those who believe that there exists a strong correlation between International Humanitarian Law and Islam, establish their theories by similarities of rules, object, and purpose served by International Humanitarian Law and Islamic Humanitarian Law. Al-Zuhili (2005)[28] and Al-Dawoody (2011)[29], there exists a strong relationship, instead of conflict or competition, between International Humanitarian Law and Islam and both, look forward towards peace, harmony, and brotherhood in the world community. They both agree on the aim and purpose of serving humanity. They can work together for the benefit of humankind. This relationship can further be strengthened by making combined efforts in serving humanity. Cockayne discusses the relationship between International Humanitarian Law and Islam with a historical perspective.[30] The brings a historical element into the discussion and recognises the role of the modern interaction between

20   Abdullah An-Naim, Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law (Syracuse University Press, 1990)
21   Ibid
22   Abdulrashid Lawan Haruna, 'War and Islamic Humanitarian Law: Appraising Warfare and Distinction as a Principle in Hostilities' (2014) 4 (5) International Journal of Humanities and Social Science 225
23   Abdulrashid Lawan Haruna, 'War and Islamic Humanitarian Law: Appraising Warfare and Distinction as a Principle in Hostilities' (2014) 4 (5) International Journal of Humanities and Social Science 225
24   Abdulrashid Lawan Haruna, 'War and Islamic Humanitarian Law: Appraising Warfare and Distinction as a Principle in Hostilities' (2014) 4 (5) International Journal of Humanities and Social Science 225
25   Ibid
26   Khadduri, The Islamic Nations (John Hopkins University Press, 2001)
27   Abdel-Haleem, Muhammad, Understanding the Qur'ān: Themes and Style (I B Tauris & Co Ltd, 2010)
28   Encyclopedia of the Middle East, Dar al Islam <http://www.mideastweb.org/Middle-East-Encyclopedia/dar-al-islam.htm>
29   Dar al-Harb, The Oxford Dictionary of Islam <http://www.oxfordislamicstudies.com/article/opr/t125/e490?_hi=17&_pos=3> accessed 12 July 2016
30   Seyyed Hossein Nasr, "The Spiritual Significance of jihad," in Traditional Islam in the Modern World (London and New York: KPI, 1987)

Islam and western civilisations in shaping Humanitarian Law.

The Muslim scholars, who consider Islamic Humanitarian Law as compatible with International Humanitarian Law, base their argument upon the rules of warfare in Islamic Humanitarian Law. Per them, Islamic Humanitarian Law acknowledges the doctrines of Just ad bellum and just in bello. They refuse to accept the argument of the western scholars about the incompatible nature of Islamic Humanitarian Law with International Community due to the rigidity and non-flexibility of God made rules. The warfare has been subsumed into religion under the concept of Islamic Jihad. The rules and regulations regarding war have been framed from the injunctions of the Quran, Sunnah, and the conduct of Caliphs. Islamic Humanitarian Law lays down the specific rules of warfare deducted mainly from Quran and Sunnah that provide the reasoning and goal of waging war against others.[31] So, war is not a matter of attaining power over others. There are norms of Jihad to control the reasons for going to war as well as the actual conduct of hostilities. Islamic Humanitarian Law lays down the specific rules of warfare deducted from Quran and Sunnah.[32]

The Islamic concept of war considers the doctrines of Just ad bellum and just in bello. It provides situations when war becomes necessary, and there is a justifiable reason. It also provides rules and regulations to conduct hostilities in accordance with the sanction of religion and the implied commands of Allah.[33] The Islamic Humanitarian Law regulates the conduct of Muslims during the conduct of hostilities. The humanitarian considerations under Islamic Humanitarian Law mainly include the principle of distinction between belligerents and non-belligerents and the distinction between military and civilian objectives. The vulnerable persons, including women, children, and elderly people are prohibited to be killed. It is the duty of the responsible leadership to make the implementation of the rules of war under Islamic Humanitarian Law.[34]

As far as the matter of dealing with people in times of armed conflicts, Islam by itself orders its followers to save people from the effects of hostilities.[35] On the other hand, the opponents of the idea of the acceptance of International Humanitarian Law just rely on the rigid nature of Islamic Laws. They argue that Islamic Law does not need any outer rules or regulations to be assimilated into its system. They reject the inclusion of man-made laws into the divine laws. The proponents of the acceptance of International Humanitarian Law in an Islamic context combine their arguments with an example from Quran and Sunnah. They reply to the objection of the opponents on the matter of rigidity of Islamic laws by interpreting the divine rules of Islam that favour the acts of serving humanity.[36]

Muslim Schools of Thought: from Classicists to Apologists
Jihad is an important section of the Islamic Law of War (al-Siyar). What it aims to make efforts and exertions for the purpose of making the world safe for people to exercise their lives according to the rules of Islam. The term Jihad has been mostly used in the context of wars, but it is not necessarily restricted to the situations of wars. Although it refers to violent conflicts, there can be situations where violent conflicts are not needed. The Islamic Jihad has been justified under Islamic Humanitarian law that provides moral principle and rules to conduct hostilities. The rules and regulations of Islamic Humanitarian Law

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31   Mustansir Mir, 'jihad in Islam' in Hadia Dajani Shakeel and Ronald A. Messier (eds), The jihad and its Times (University of Michigan, 1991)
32   Moulavi Cherägh Ali, A Critical Exposition of the Popular Jihad (edn 2, Lahore: Karimsons, 1976)
33   Muhammad Iqbal, Varb-i Kalim, in Kulliyyät-i Iqbal [Urdu Volume] (Lahore: Sh. Ghula,m Ali and Sons, 1973)
34   Muhammad Hamidullah, The Muslim Conduct of State (5th edn, Lahore: Sh. Mubammad Ashraf, 1968)
35   Rudolph Peters, jihad in Classical and Modern Islam: A Reader (Princeton, NJ: Markus Wiener, 1996)
36   Mahmüd Shaltüt, "The Koran and Fighting (Rudolph Peters tr, Leiden: E. J. Brill, 1977)

clearly prohibit the armed groups to conduct hostilities against civilians and target non-military objectives.

Islamic Humanitarian Law suggests the followers take precautionary measures for the purpose of making a distinction between the civilians and combatants. It gives civilians the right to necessary protection during the conduct of hostilities. It is the responsibility of the fighting groups to provide protection to the civilians. The misconception about the violent and harsh nature of the concept of the Islamic Law of War (Jihad) needs to be cleared. The role of Muslim scholars and students is very important in educating people about the objects of Islam. They must spread the true meanings and purpose of the Islamic Law, including Islamic Law of War, through television, radio, newspapers, internet, social networks and other various mediums of communication.[37]

Furthermore, the concept of Jihad and humanitarian principles in Islam are not only criticised by Western scholars but also Muslim scholars are divided on the concept of Jihad. There are different schools of thought among Muslim scholars. The views of one school of thought are often replaced by the views of the opposing school of thought, and a subsequent school of thought is created to defend their ancestors, and the process goes on.

The classicists consider Jihad as binding on each Muslim. They consider Jihad as a tool to achieve the goal of establishing a universal Islamic State in the world. These notions sideline the humanitarian values and encourage the followers of Islam to adopt extremist behaviours.[38] They quote the verses from the Quran and Hadith to support their theory. The classicists allow the killings and other types of brutal acts to achieve the goal to establish a universal Islamic hegemony. They justify these acts by giving Jihad the name of 'Holly War' and compromise humanitarian values against their aim.

The world was divided into two zones by the early Muslim jurists, the House of Islam (dar al-Islam) and the House of War (dar al-Harb).[39] Dra al-Islam was comprised of those areas of the world where Muslims were free to practice their religion as the ruling sect and where certain religions, (Judaism, Christianity, and Sabianism) were to be tolerated.[40] Dar al-harab was the areas of the world where the Islamic law was not implemented in the matter of worship and the protection of the faithful and dhimmi.[41]

The classicists were of the view that House of Islam could attack the House of War until both the houses have entered peace pact. They categorised the people belonged to Dar al-Harb in two types, scriptures (Jews and Christians, etc.), and non-scriptures (especially the idolaters). The classicists were strict about the non-scripturers that had to choose between Islam and death only, whereas the scriptures were tolerated within the Islamic body politic on condition of paying the jizyah and become dhimmis ("protected citizens"). Thus, the idolaters aside, non-Muslims may be offered three options-Islam, *jizyah*, and war, in that order. In a word, Islam preaches the doctrine of perpetual war.[42]

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37   Mustansir Mir, 'jihad in Islam' in Hadia Dajani Shakeel and Ronald A. Messier (eds), The jihad and its Times (University of Michigan, 1991)
38   Majid Khadduri, The Islamic Nations (John Hopkins University Press, 2001)
39   Abdel-Haleem, Muhammad, Understanding the Qur'ān: Themes and Style (I B Tauris & Co Ltd, 2010)
40   Encyclopedia of the Middle East, Dar al Islam<http://www.mideastweb.org/Middle-East-Encyclopedia/dar-al-islam.htm>
41   Dar al-Harb, The Oxford Dictionary of Islam<http://www.oxfordislamicstudies.com/article/opr/t125/e490?_hi=17&_pos=3> accessed 12 July 2016
42   Seyyed Hossein Nasr, "The Spiritual Significance of jihad," in Traditional Islam in the Modern World (London and New York: KPI, 1987)

The apologist school of thought presented a different angle of the Islamic concept of Jihad. They tried to present Islam like pacifism. This group rejected the concept of offensive war in Islam and supported the defensive war only. Sir Syed Ahmad Khan and Molvi Chiragh Ali appeared to be the leading scholars of this group in British India in the second half of the nineteenth century. This group not only opposed the offensive war but also opposed the defensive war against British and advised the Muslim to accept the British Raj.

Sir Syed Ahmad Khan forbade the Muslims from fighting against British Government in India because the British Government did not interfere in their religious matters. Per them, the defensive war had only been allowed in the situation of interference with the religious life of Muslims.[43] Molvi Chiragh Ali tried to prove all the Muslims as defensive in these words;

> All the defensive wars [of Muhammad], and the verses of the Koran relating to the same were strictly temporary and transitory in their nature. They cannot be made an example of, or be construed into a tenet or injunction for aggressive wars, nor were they intended so to be. Even they Quranic verses and Muhammad's defensive wars cannot be an example or instruction for a defensive war to be waged by the Mohammadan community or commonwealth, because all the circumstances under which Mohammad waged his defensive wars were local and temporary.[44]

The idea of Moli Chiragh Ali was severely criticised. He was named as an agent of the British colonialism. Per the critics, the purpose of this school of thought was to accomplish the agenda of British colonialism and present the peaceful image of Islam in front of Europe only. Allam Muhammad Iqbal, the influential poet of East, severely criticised Molvi Chiragh Ali and written;

> Europe has put on a full-length coat-of-mail to defend the honour and glory of Falsehood. We ask this question of the church-pampering shaykh: If war is evil in the East, it is evil in the West, too; so if truth and fairness are in question, is it appropriate to call Islam to account but spare Europe?[45]

The reaction to apologists emerged in the birth of a Neo-Classicists school of thought among Muslim Scholars. This school of thought presented the modified classicist's concept of Jihad. The concept of defensive Jihad given by the apologists was severely criticised by the Neo-Classicists. They presented the classical concept with the philosophical basis and renewed vigour.[46] They neither fully supported the idea of offensive Jihad laid down by classicists, nor accepted the concept of defensive Jihad given by apologists. They separated religious conversions from the political rule and opposed the idea of converting the non-Muslims with force or coercion.

They apologists presented the idea of converting unjust and oppressive non-Muslim governments into equitable Islamic rule by allowing people to enjoy true freedom and free choice of religion. Abu al-Mawdudi, being the pioneer of the neo-classicists written a remarkable book of more than six hundred pages. Hasan al-Bannä, Sayyid Qu!b, and Hamidullah supported his views and prepended his philosophy. Mawdudi presented the

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43   Mustansir Mir, 'jihad in Islam' in Hadia Dajani Shakeel and Ronald A. Messier (eds), The jihad and its Times (University of Michigan, 1991)
44   Moulavi Cherägh Ali, A Critical Exposition of the Popular Jihad (edn 2, Lahore: Karimsons, 1976)
45   Muhammad Iqbal, Varb-i Kalim, in Kulliyyät-i Iqbal [Urdu Volume] (Lahore: Sh. Ghula,m Ali and Sons, 1973)
46   Muhammad Hamidullah, The Muslim Conduct of State (5th edn, Lahore: Sh. Mubammad Ashraf, 1968)

idea of the propagation of Islam. So, just it is incorrect to say that Islam uses the sword to convert people, it is equally wrong to say that the sword has played no part in propagating Islam.

> The truth lies in between the two, namely, that the call to Islam (tabligh) and the sword have both contributed to the propagation of Islam, just as is the case with any other civilisation. The function of tabligh is to sow the seed, the function of the sword is to turn up the soil. First, the sword softens up the ground so that it develops the capability to grow the seed; then tabligh sows the seed and supplies the water, so that produce, the real objective of this cultivation, is obtained. In the whole history of the world, we do not find any signs of a civilisation that did not owe its existence to the workings of these two factors.[47]

This Modernist school of thought favours the concept of defensive war in Islam. Their theory is based on the injunctions of the Quran and Sunnah that forbid the Muslims from aggression. The modernists favour the conversion of non-Muslims by preaching them to Islam without any coercion. They give Quranic references that respect the dignity of man, unity of mankind, human cooperation, human freedom, justice, equity, and reciprocity.[48] The study the relevant Qur'anic verses and concludes that the Qur'an allows fighting only to ward off aggression, protect the Mission of Islam, and defend religious freedom.[49]

They present the peaceful nature of Islam and consider peace as the base of the international relations in Islam. Rather than giving general meanings to each commandment given in a situation, they interpret the verses of the Quran, Hadith, and practical examples of the lives of the Caliphs in a proper context. They interpret the war-related injunctions of Islam by looking at the context of those situations. They give contextual interpretations to the Quran as to understand the true sense of the verses of Quran relating war and fighting with non-Muslims.

A leading modernist scholar Shaltut writes in reference to Q. 9:29 ("Fight those from among the People of the Book who do not believe in God and the Hereafter and do not follow the Religion of Truth-until they should pay the jizya out of their own hands, having been reduced to submission.") that the verse ought to be understood in the light of other Qur'anic verses (such as 9:7-16, 30), which changes the interpretation of the verse radically.[50]

The followers of this school of thought have introduced this trend in current Muslim Quranic studies in various parts of the world, especially in Pakistan, India, Egypt, Syria, and Turkey. It can be considered a positive step in introducing the contextual understanding of the Quran by giving contextual meanings to the verses relating Jihad. The modernists give non-threatening meanings to the concept of Jihad in Islam as compared to the threatening picture drawn by the classicists and the defensive version of the apologists. They appeal to the non-Muslim communities of the world by presenting a peaceful concept of Islamic version of Jihad in a logical way.[51]

All the Muslim schools of thought provide various theoretical and dogmatic aspects of the

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47   Rudolph Peters, jihad in Classical and Modern Islam: A Reader (Princeton, NJ: Markus Wiener, 1996)
48   Mahmüd Shaltüt, "The Koran and Fighting (Rudolph Peters tr, Leiden: E. J. Brill, 1977)
49   Mustansir Mir, 'jihad in Islam' in Hadia Dajani Shakeel and Ronald A. Messier (eds), The jihad and its Times (University of Michigan, 1991)
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51   Rudolph Peters, jihad in Classical and Modern Islam: A Reader (Princeton, NJ: Markus Wiener, 1996)

Islamic concept of Jihad in the context of their own interpretations of the rules of Islamic Law. [52] The analyses of all the approaches to Jihad by various Muslim schools of thought leaves certain pragmatic questions unanswered. The approach of the classical and neo-classical schools of thought present a passive and defensive concept of war that seems impractical to conceive the world without war. Another question remains unanswered on the matter of the feasibility of waging war by secular or religious forces in the present era. The world has seen two world wars in one century where religion cannot be held responsible, and of course, Islam is not responsible for providing an answer to this question.

Conclusion

The views of the Western scholars seem vague in the context of large Muslim populations residing in non-Muslim countries. The views of western scholars tend to suggest the western countries treat the Muslims as a hostile force, but the western countries tolerate this large Muslim population in their society. Most of the Muslim states are the members of all the organisations of the world community and actively participate in the matters of the international community. They have strong ties and relations with the non-Muslim and western countries based on equality. The idea of the non-acceptance of International Law in the context of Islam is also based on weaker grounds, as most Muslim states are obliged the rules of International Humanitarian Law and are a signatory to the conventions and treaties of the International Humanitarian Law.

The concept of Jihad has multiple dimensions that are often used as an instrument of politics by the Muslim states. This concept has not only been used to fight against foreign powers but also fight against immoral and evil powers within the state. The call to jihad, made by rulers and leaders who enjoy the trust of the people, can be very effective. As such, it has been used and will be used, by Muslim governments and leaders to combat major threats to society. The fighting against injustice, economic disparity, and corrupt powers amounts to Jihad in the context of politics in the Muslim world.

The Muslim scholars have been divided on this concept of Jihad. Their interpretations of Islamic rules have established different schools of thoughts among them. The Muslim religious scholars have been favouring the offensive war to achieve the goal of the establishment of a universal Islamic state, the apologists have been in favour of the defensive war situations, while modernists believe in the middle path among both the extremes. The modernist Islamic scholars have interpreted the rules of Islam in a logical way by looking at the context of the text of Quran and Sunnah in a context. Instead of applying each word of Quran and Sunnah in each situation, they have made contextual interpretations of texts, phrases and commandments of Quran and Sunnah that apply to contexts.

The Islamic concept of Jihad is neither based on the concept of violent or terrorist approach of the Western scholars, nor fully complement the apologist approach of the apologist school of thought. International Humanitarian Law is a set of rules that helps civilians in times of armed conflict and Islamic concept of Jihad never contradict the human friendly rules for protecting civilians.

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52   See also Muhammad Siddiq Armia, 'Implementing Islamic Constitutionalism: How Islamic Is Indonesia Constitution?' (2018) 15(2) Al 'Adalah Journal 437-450. See also Muhammad Siddiq Armia, 'Ultra Petita and the Threat to Constitutional Justice: The Indonesian Experience' (2018) 26(2) Intellectual Discourse 903-930.

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