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Women's Legal Protection During the War in Islam and International Humanitarian Law

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ABSTRACT

The goal of this study was to outline serious abuses committed against women during the war and demonstrate how the legal system handles these kinds of crimes reflects both the regulations' inapplicability and incapacity to protect women. We attempted to review a few of those regulations, but since human-made regulations cannot be compared to those created by God, the study concluded that Islamic laws protecting women ought to be implemented during times of armed conflict due to their efficacy. Regarding the protection of women during conflict or war, every Muslim is required to abide by the laws of the Quran and Hadith. Eventually, this could apply to the entire world.

Keywords: *International humanitarian law, Islam, rights, war, women.*

God accorded the highest honor to humanity through his views, decrees, and rights that uphold man's life and property while ensuring his minimal well-being and religious convictions. In Islam, women were respected. This is evident in surah An-Nisa' of the Holy Quran, which recognizes and values women's contributions to society and emphasizes their rights, dignity, and protection in numerous instances throughout the Quran and in deserving discourse. Women are still interested in divine and positive laws and religions, despite the increasing vulnerability of women during armed conflicts and the increasing and frequent human rights violations, the United Nations "General Assembly" supported the protection of women by special laws and protocols (Al-Salihi 2022). UN reports that about six hundred million women will live in conflict-affected countries in 2022., an increase of 50% since 2017,

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and civilians all over the world need more humanitarian more than before. Countries are increasing their military spending, exceeding 2.2 trillion US \$ from 2017 to 2022 (Women 2023).

The laws of heaven continue to be the most valued and respected because they are derived from God Almighty and should be applied and respected by all, provided that they are not tainted by deception or falsification. Islam was keen to protect women in all circumstances, and during the war in particular.

This paper focuses on the protection of women in war. There is a previous publication on women's rights during armed conflict that has been followed through their protection in international humanitarian law, as well as women's rights in Islam, including studies on the topic of the participation, and protection, of women and children in armed conflict.

This paper tries to discuss the protection of women and children in armed conflict. It also discusses the legal implications of the participation of women and children in armed conflict under international humanitarian law and Islamic law. This study found that there is no significant difference between Islamic law and international humanitarian law on the issue of participation of women and children in an armed conflict (Mumammad 2020).

There is a study on women and international humanitarian law, which focused on international humanitarian law has several provisions providing special protection to women who are part of the civilian population. The purpose of the paper is to discuss these provisions of international humanitarian law and weigh the importance of some more rules of safety that ought to be approved during these armed conflicts considering the special needs of women. It recommended more effort must be put into improving the actual peacetime position of women, *inter alia* by changing harmful stereotypes affecting women. The rise of the awareness of dreadful, long-term consequences of violence is necessary, Furthermore, sufficient medical, psychological, economic, and legal assistance needs to be provided to the victims of conflict-related victims. Finally, the effective prosecution of perpetrators is crucial, as impunity of offenders. (Aggarwal 2018).

There is a study also conducted on international humanitarian law, Islamic law, and the protection of children in armed conflict, this paper compares how the rules of international humanitarian law and rules of Islamic law protect children in armed conflict. It examines areas of convergence and divergence and areas where there is room for clarification between these two legal systems. The study concluded that we aim to serve to disseminate key protective rules that have long adapted to changing contexts on modern battlefields; Islamic law is flexible in many of its rules and responds to changing realities and contexts. It also has a great impact on the daily lives of hundreds of millions of Muslims and can therefore contribute alongside international humanitarian law to the alleviation of the suffering of victims of armed conflicts (Al-Dawoody & Murphy 2019).

Our study aims to strengthen the protection of women during the war by comparing the protection established for women during the war in Islam, and in international humanitarian law, to identify an effective system of protection, In the light of contemporary challenges that have resulted in women's scourges during these conflicts, where the problem with our studies is that these laws are only theoretical in most conflicts. and is not applied in practice, which predominantly violates and flagrantly violates its rules. We used comparative

and descriptive methods by examining both the rules of international humanitarian law and Islamic law, describing women's scourges in those conflicts.

In brief, women's rights mean the rights and freedoms granted to women and girls of all ages. People's view of women varies from one civilization and era to another. Their situation was going from bad to worse, as they were seen as a cause of misfortune and misery in life, as their right to live in dignity and security was lost (Metwaly 2018).

Before the coming of Islam, women were subjected to a lot of degradation and injustice, women humiliation, and infanticide to eliminate shame in those times before Islam, even in European society, wives were sold in England between the 5th and 6th centuries. The situation was somewhat remedied in the 11th century when the Supreme Court passed a law stipulating that a husband has the right to transfer and lend his wife to another man, but for a limited period (Al Rawy 2010).

Violations of Women during the War

A report indicates the alarming fact that about 90 percent of today's war victims are civilians, mostly women and children. The document reveals that the number of civilian casualties in wars has increased by almost 20 times over the last century, to up to 90 percent in recent years, Bery Levinger, Senior Adviser on Education and Development at the United Nations Development Program (UNDP), was a research director for the "State of the World's Mothers" report. Levinger told RFE/RL: "By the year 2002, approximately 90 percent of all casualties [in conflicts] are women and children. This has to do with the way war and conflicts are resolved, whether it's terrorism or systematic genocide. A little bit less than 100 years ago, during World War I, the percentage of casualties who were women and children was about one in 20 -- 5 percent. In World War II, because of the bombing, the proportion rose to 65 percent. But now we're looking not at [world] wars but at isolated [conflicts] across the world, and we're seeing nine out of 10 casualties are women and children. That's a very traumatic change!" (Tomiuc 2002).

Confirming the above, women are the main victims in Gaza, with thousands of women and two lives lost every hour, the United Nations Agency for the Promotion of Gender Equality, as a result of the more than one hundred days of conflict. United Nations Women added that three thousand women may have become widows and heads of households, the agency pointed to gender inequality and the burden on women fleeing the fighting with children and being displaced (Lederer, 2024), in Sierra Leone since the year 2000, sixty thousand women were affected by the conflict in the Western Area, Tonkolili, Kenema, Pujehun and Kailahun Districts (ICRC 2003).

Where such injustice and violations are compounded during war, whether international or internal, the international community formally recognized this in Security Council resolution S/RES/1325(2000) that "civilians, especially women, the vast majority of those affected by armed conflict, including refugees, Internally displaced persons, targeted by combatants., such as rape, pornography, sexual violence, deliberate infection with AIDS, medical experimentation on sexual, pregnancy complications, birth defects, and sterility following exposure to toxic weapons, forced displacement, expulsions, attacks on the civilian population, women detention of in conditions designed for men or without the presence of

female guards, the deprivation of civilian, social, economic, and cultural rights in conflict situations has a special impact on women. This includes house destruction and expropriation, property destruction, and confiscation, denial and withholding, of humanitarian assistance, and shortage of food, leading to malnutrition. no adequate sanitary conditions, loss of education, no adequate medical care, and maternal health care. Undoubtedly the effects based on abuses suffered during times of conflict are magnified by unfairness against women and may continue after armed conflict, such as injury during conflict, unfairness against mothers produced by conflict-related rapes, the derogatory perception of victims, suicides, honor killings (Bennoune 2007).

Women's Rights in International Humanitarian Law during International Survey Conflicts

Although there are general rules on the protection of women during war in international law, such as the Declaration of Protection Women, Children in Emergency, and Armed Conflict, which calls to respect the Declaration by all countries pledging to abide by and respect the Declaration. Attacks and bombings on the civilian population, inflicting incalculable suffering, especially on women and children, who are the most vulnerable members of the population, shall be prohibited, and such acts shall be condemned.

The use of chemical and bacteriological weapons in the course of military operations constitutes one of the most flagrant violations of the Geneva Protocol of 1925, the Geneva Conventions of 1949, and the principles of international humanitarian law and inflicts heavy losses on civilian populations, including defenseless women and children, and shall be severely condemned, All States shall abide fully by their obligations under the Geneva Protocol of 1925 and the Geneva Conventions of 1949, as well as other instruments of international law relative to respect for human rights in armed conflicts, which offer important guarantees for the protection of women and children, All efforts shall be made by States involved in armed conflicts, military operations in foreign territories or military operations in territories still under colonial domination to spare women and children from the ravages of war (General Assembly resolution 3318, 2024).

All the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment, and violence, particularly against that part of the civilian population that consists of women and children. All forms of oppression and inhuman treatment of women, such as torture, severe imprisonment, torture, death by shooting, mass arbitrary arrests, collective punishment, destruction of dwellings, and forcible eviction, committed by belligerents in the course of military operations or occupied territories shall be considered criminal. Women and children belonging to the civilian population and finding themselves in circumstances of all forms and types of armed conflicts to achieve peace, the right to self-determination, national liberation, independence, and freedom, or who live in occupied territories, shall not be violated and deprived of shelter, food, medical assistance, or all inalienable rights, or waived for humanitarian considerations, under the provisions and rules stipulated in of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights (General Assembly Resolution 3318, 2024).

Despite everything discussed above, there is no doubt, that most rules exist in international humanitarian law including a general provision protecting all civilians and affording women special protection during war. There are about 43 provisions of the Geneva Conventions and Protocols that deal with women and the effects of war. It is unfortunate that the women's rules are presented as less important than others, as they are couched in a different language than provisions that protect combatants and civilians in general, by using the concept of "protection" rather than prohibition. It is also disturbing that violations of these rules are not treated as serious within the rules themselves, as according to these rules they are not considered "serious violations" or a violation of what is stated in the agreements, and no attempt has been made to implement these rules, despite the violations. The wide range to which women are exposed (Gardam & Charlesworth 2000) focuses on emphasis on prevention of violations, including engaging with and educating belligerent actors, multisectoral response to female victims of sexual violence, and meeting the humanitarian needs of female civilians in conflict settings.

To prevent violence against women during armed conflict, such as organizing and protecting matters relating to women's personal safety, sexual violence, freedom from arbitrary displacement, freedom of movement, food and water, clothing, health and medical care, health care for victims of violence, Working to maintain and protect family ties between people separated by war, searching for family members who went missing during the war, and working diligently to reunite the family, education and training, access to information, personal documentation, and access to effective remedy should be protected. One of the important conferences that preceded the twenty-seventh international conference, which was held in 1999, where an executive action plan was adopted that contains several specific references to protect women in armed conflicts, and several mechanisms for protection, such as ICRC drafting a set of guidelines to work on the need to meet the protection and assistance needs of women better and more highly. At this conference, the ICRC pledged "to ensure that the specific protection, health, and assistance needs of women and girl children affected by armed conflicts are appropriately assessed in its operations to alleviate the plight of the most vulnerable" and "to emphasize its activities on the respect which must be accorded to women actively disseminating the prohibition of all forms of sexual violence to parties to an armed conflict" (Lindsey 2001).

Also, international humanitarian law does not prohibit women from participating in the war. Even the law acknowledges the fact that in recent history women have played an active role in wars. Though women participate in armed conflict, women are entitled to certain concessions. International humanitarian law requires that prisoners of war should not be discriminated against, so women shall not be discriminated against if they participate in an armed conflict based on their sex. Similarly, *Article 76 of the Additional Protocol I to the Geneva Convention* emphasizes the following: Special efforts should be made to protect women from rape, forced prostitution, and other inappropriate acts. If a woman is a prisoner of war and is accompanied by young children with her, then the cases of such women should be looked at on a priority basis. No matter how serious a war crime is committed, no pregnant woman will be sentenced to death and no such punishment shall be imposed (Mumammad 2020).

In general, given the scale of the humanitarian impacts arising from armed conflicts and especially for those not directly involved in the conflict, *Article 3 of the 1949 Geneva*

Convention sets minimum standards applicable, that we see. One of the reasons for optimism is that in war, international humanitarian law works to provide protection and it requires humane treatment of the following categories: wounded and sick, prisoners of war, and civilians without discrimination as to race, sex, nationality, religion, political opinions, color or other criteria, but unfortunately international humanitarian law recognizes that women face problems of separation in war, so they must be provided with greater protection. It should be given to women to prevent this from happening (Bunga 2017).

There is objection from the warring parties to the application of international humanitarian law by states, and there is weak enforcement of international humanitarian law, there are also limitations on the ICRC's role and activities: the ICRC's neutrality excludes "gender power relations" from its mandate, covert representation of warring parties, increased silence on sexual violence and gender-based, harm the development, interpretation, and implementation of international humanitarian law (O'Rourke 2020).

In the view of a group of critics advocating for contemporary women's rights, the major disaster is that some of the rules of international humanitarian law related to women have become outdated and do not keep pace with the tremendous development in wars. Rather, they also reflect very stereotypical ideas about women that lead to the perpetuation of discrimination between men and women, which we do not accept. For the above and because of the identification of the critical relationship between discrimination and violence against women that must be changed, including in the context of conflict, this assertion is particularly important. More importantly than all of the above, the biggest challenge is that in addition the rules of international humanitarian law often face failure in their implementation, according to the International Committee of the Red Cross. If women have to be patient and bear and confront this number of tragic effects of the conflict, it is not because of any shortcomings in the rules that protect them but due to the failure to implement these rules by countries and the governments of those countries. It repeatedly calls on governments to respect and implement existing rules, stressing that it is ironic that if in real life women are not always properly protected, it is not due to a lack of a legal basis. The international community will not succeed in redressing this situation once new rules are adopted. Most important of all, it must ensure that the rules already in place are respected, as the goal is not the strength of the rules or the beauty of their formulation, but rather their implementation on the ground (Bennoune 2007).

Also, there is no doubt that the main problem is that these provisions inherently differentiate between men and women, The amount of implementation can overcome this fundamental flaw in the system, international humanitarian law does not take women into account as a subject. It takes experience, and men as a starting point. In no case can things be straight. The optimal application of international humanitarian law in a world that does not equal women and men. War affects men and women, but laws take men's experience as a rule against it which builds unfair rules. Although women already get special protection under international humanitarian law – for example when pregnant or prisoner of war, these rules only relate to sexual and reproductive aspects of women's lives from a male point of view. Not processing one of the problems that women suffer due to armed conflicts attributed to the limits of international humanitarian law, the matter is not correct when linking only the

physical composition of women and the rules that protect them, but equality must be general and abstract in all rules. Scholars are increasingly focusing on the unreality of strict divisions between human rights law, international humanitarian law, and refugees. The law covers the entire population, and its effects of modern armed conflict are far-reaching and long-term. For women in particular, as women's suffering is not limited to times of war, the dire reality proves that the cessation of hostilities is just the beginning of their battle for survival, a process that differs markedly from men's experience in the post-conflict phase, as men's mission ends with the end of the war. Two examples of the application of the limits of international humanitarian law illustrate how the law fails to consider the realities of war for women. The first illustrative example relates to how one of the components of the rules themselves was applied, which is the principle of proportionality, which in reality is not applied fairly, as there is a large disparity between military capabilities between countries. The second example relates to economic sanctions (Gardam & Charlesworth 2000).

Women's Rights during the War in Islam

The Islamic Sharia was the first to give human dimensions to wars over 1,400 years ago, the texts of the Quran and Sunnah make clear that waging war is only permissible as a response to aggression and persecution, to prevent a greater evil. Islam adheres to the non-aggression principle, that no person or animal should be harmed unless such harm is necessary to secure a greater benefit or to prevent a greater harm. On this basis, the Quran mandates military intervention to assist the oppressed, preemptively if required. Islam strictly prohibits the intentional targeting and killing of any civilians or noncombatants or destroying their property, unless a careful military calculus determines that the risk of collateral damage is morally acceptable. Prisoners of war are to be treated humanely, integrated into the wider society, and given realistic avenues to secure their freedom through a reasonable expectation of labor. Deterrence against the enemy, by telegraphing a credible response capability to unprovoked hostility, is encouraged as a means of keeping the peace. Terrorism, by contrast, is a reprehensible tactic that is a violation of both fundamental Islamic teachings and modern just war theory (Shibly 2017).

As for women, Islam had decided to protect women significantly during armed conflicts. Islam has incorporated the rules of religion and inferiority together. The purpose of Islam is for man to live with himself in peace, with others and with society, the Islamic religion is based on the protection of life, mind, religion, and property and when Quran verses spoke of wars, it was not intended to fight anyone who converted to a religion other than Islam. But when the writers of Jews and Copts and elsewhere provided for hypocrites and infidels, it was only to distinguish them from Muslims and not to justify a war with them, Islam was the religion of peace, not to leave women during the war but to protect them (Grant 2017).

Islamic law showed intent to save souls that war crimes that occur between states constitute a considerable size; particularly women murders or fighters raping them and tinkering with their wives. She stressed that Islamic law ensured women general protection from the effects of hostilities before, during, and after the fact; it was a preventive measure or safety valve for the women of assault or abuse, rape, torture, and abuse, and by adjusting the

actions of Mujahideen through instructing them to be sued to make the word of God, which means show the wisdom of involving the right and justice, and not bloodshed. The Islamic legislation conferred more protection for women's war; the report of their legal provisions to limit the effects of hostilities on their bodies and for their protection. And the contemporary international jurisprudence about women's war, she meets in its entirety with jurisprudence (Abdel Aziz 2016).

Islamic law does not allow women to participate in the war directly. Imam al-Sarakhsi says, "We do not like women to participate in wars with men because the structure of women is not fit for war, as the Prophet (peace and blessings of Allah be upon him) pointed out with the words, 'Alas! She was not a fighter". Even in the life of the Prophet (peace and blessings of Allah be upon him), women did not take part in wars directly. This shows that Islamic law does not allow women to participate in wars, but in times of great need, women can take part in direct armed conflict (Mumammad 2020).

The Holy Quran and Sunnah are the primary sources of Islamic law. Al-Quran and Hadiths of the Holy Prophet provided complete protection for women's rights during the war. According to Islamic law, war cannot be waged against neutral individuals or countries, no matter how many ideological differences may arise between them. Islam commands to be peaceful with such neutral people because Islam prohibits war and confrontation. It respects every human soul and takes full care of the sanctity of human blood at every level. Islamic law always commands us to adopt the path of moderation in all circumstances. Even during the war, brutal and unnecessary massacres are not allowed. Islam strictly forbids the massacre of innocent and non-Muslims, even during war. It is the only religion in the world that sets regular rules and regulations for armed conflicts and wars. Therefore, according to Islamic teachings, it is not allowed to kill, rape, harm, or disrespect women even during a war, prohibiting the killing of non-Muslim women, children, and the weak during the war, Islam considers the sanctity of human blood to be more virtuous than the sanctity of the Kaaba. Unjust blood has also been condemned during the war. The Muslim army was not even allowed to enter the homes of the enemy without permission. Even in wartime, during all the battles in which the Holy Prophet (participated, He was never allowed to take women as a prisoner. In the Battle of Badar, several women came with the warrior troops, after the victory of Muslims, the Holy Prophet advised their warriors not to chase women and wounded persons on the battlefield Islamic law never allowed them to take women as prisoners during the war. After the Death of the Holy Prophet, his companions also followed this path, instructions, and Islamic law in every field of war. Abu Bakar was the first Caliph of Islam and he always obeyed the instructions of the Holy Prophet during wars. Caliph Umar guided his military commander Usama bin Zaid and said: "Stop, O People that I may give to ten rules for guidance in the battlefield. Do not commit treachery or deviate from the right path; you must avoid assaulting and mutilating dead bodies; Do not kill a woman, a child, or an old person, cut down fruit trees, and do not destroy populated areas; Do not slaughter any sheep, cow, or camel, except for food (Akram & Jamil 2021).

Thus, Islam has provided women with the necessary protection by deciding to make war necessary and minimal. by limiting hostilities to enemy men and combatants only, it distinguished between combatants and non-combatants, what is more, important is to make

it possible to engage in war and hostilities in a humane spirit through the fact that justice is the essence of Islam and is no way to override those values either in war or in peace. Thus, it is impossible for a nation modifying treatment with animals, bears, and ants to deviate from justice in its dealings with the nations of those involved and the people of the warrior writers, as well as the sanctuary of Islam betrayal and treachery in wars. Rather, it emphasized adherence to treaties and charters, as well as the prevention of destruction, destruction of funds, and the prohibition of starvation of besieged cities, to order a cessation of hostilities if the enemy stops. Regarding women, it has been established that killing or intending to kill non-combatant women is an offense punishable by Islamic law, and to issue strict instructions to the soldiers not to expose women to violence and to punish them, to order a cessation of hostilities if the enemy stops. It has been established that killing or intending to kill non-combatant women is an offense punishable by Islamic law, and to issue strict instructions to the soldier not to expose women to violence and to punish them, not to involve women in the fighting, Islam was keen to protect the family through family reunification and non-infringement of personal dignity, protecting women in post-family war situations and compassionate humane treatment by not wasting insubordination, not dividing captive women between the mother and her child, not passing the captives on their dead relatives, and respecting the honor and dignity of the female prisoners (Abdel Aziz 2016).

Discussion

There is deliberate targeting of civilians by the opposing parties to the war, and it has become a strategic objective of those wars in contravention of all religious and religious rules, especially in the light of the evolution of weapons and their increased destructive power, which naturally increases the number of such victims, especially women and children, It is even worse that women are not only killed but also all forms of violence, such as rape, sexual assault, mutilation, and humiliation because women are the foundation of the power of societies and the solidity of children. When they are assaulted and killed, society is harmed, intimidated, and broken and their states are defeated, there is a clear failure by the legal treatment of women's protection during armed conflicts, especially in terms of the effectiveness and effective application of those humanitarian legal rules. They are almost imminent in the theoretical nature of the overthrow by many states, there is no punishment or reckoning for anyone who attacks these women.

The urgent need is now to apply the rules of Islam regarding the protection of women during armed conflicts. We have reviewed that they are complete complements that do not recognize a total war and confine fighting to a time-bound, place-bound, and targeted circle that protects women from the effects of hostilities before and after they occur, The inadmissibility of their involvement in combat, the protection of women's honor and the protection of the family, and the prevention of the killing of women prisoners, international treaties and conventions in general on the protection of women and quoted from the teachings of Islamic law must be respected.

We must disseminate key protective rules – both international humanitarian law and Islamic law to influence the development and clarification of both international humanitarian

law and Islamic law, both of which have long adapted to changing contexts on modern battlefields. Islamic law is flexible in many of its rules and responds to changing realities and contexts. It also has a great impact on the daily lives of hundreds of millions of Muslims and can therefore contribute alongside international humanitarian law to the alleviation of the suffering of victims of armed conflicts.

There is no doubt that the protection of women in armed conflicts has its rules appropriately codified in international law, but it is a theory that is not applied. If women suffer in situations of armed conflict is not because there are no laws to protect them, but these laws are not implemented and/or respected by countries and the governments of these countries.

The study's area of concern needs to embrace its noble theme and purpose researchers, develop its idea, and move forward toward effective international application, the study concludes that the legal rules that protect women are sufficient, and what is required is their better application, and that there be equality and a fair system between countries based on respect for the sovereignty of countries and non-discrimination between men and women.

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