



NATURE OF RELATIONS BETWEEN MUSLIM AND NON- MUSLIM STATES: DISCOURSE OF MUSLIM CLASSICAL AND CONTEMPORARY SCHOLARS

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ABSTRACT

The nature of the relations between Muslims and non-Muslims states has always been debatable to Muslim and non-Muslim scholars. After the incident of 9/11, the nature of relations between Muslims states and nation states once again emerged as burning issue and research is started by Muslim and non-Muslim scholars on the doctrine of Jihād. Two different views regarding the nature of relations among states came into being: the first one is that the world is divided into two parts Muslim and non-Muslim states. The impact of this division yields to perpetual war between Muslim and non-Muslim states. The other view is that there are peaceful relations between Muslim and non-Muslim states in all situations. It is felt that these two views regarding the nature of relations between Muslim and non-Muslim states are based on overestimation. There is enormous need to analyze the views of classical and contemporary scholars regarding the nature of relations between Muslim and non-Muslim to point the accepted view of Muslim International Law(MIL). This research investigates the classical and contemporary scholar's views regarding the relationship between Muslims and non-Muslims. This study sums up that neither the diversity in faith between Muslims and non-Muslims nor the differences of territorial jurisdiction necessarily create hostility. MIL considers only aggression is cause of war either caused by the Nation States or group of non-Muslim individuals or even by Muslims like rebels. The aggression may be either against Muslim state or Muslims individuals who reside even beyond the territorial jurisdiction of Muslim state. Similarly, MIL considers breach of peace treaty or preventing non-Muslims from embracing Islam or compelling Muslims from being not following Islam or making them apostates, as aggression. Any act of Blasphemy against



Prophets by non- Muslim state or group of individuals supported by a Nation State is also considered aggression. Other than the situations mentioned above, all the relationships between Muslim and non- Muslim states are considered as peaceful or friendly. MIL does not believe in perpetual war against non- Muslim states and believes in the co-existence with nation states.

Keywords: Jihād, Muslims, Muslim International Law, Non-Muslims, Perpetual War.

Introduction

Nature of relations between Muslim and non-Muslims cannot be understood properly without proper understanding of the different interpretations of the cause of war, division of the world into different states regarding war and peace.

This paper examines the viewpoint of Muslim classical and contemporary scholars regarding the nature of relations between Muslim and non-Muslim states. This paper also discusses the juristic issues regarding the cause or causes of war between Muslim and non-Muslim states like infidelity, aggression or culmination of tyranny and injustice or establishing the writ of Allah by inviting non-Muslims to the way of Allah. These kinds of comparative discussions are made understandable to clear the misunderstandings regarding the nature of relations between Muslims and non-Muslim states. This paper examines the nature and parameters of the normative relationship between Muslims and non-Muslims. This research work answers the question of permanent relationship of Muslim and non- Muslim in situations of hostility and peace. If the relationship of Muslims with non- Muslims is assumed as hostile then what will be the interpretation of the verses of the Qur'ān which induce Muslims to do good with non- Muslims (Al- Qur'ān, 08:60). If the relationship of Muslims with non- Muslims is presumed as peaceful then what will be the understanding of the verses of the Qur'ān which invoke Muslims on Jihād(Al- Qur'ān, 02:193). These kinds of discussions are made understandable in this work to clear the view point of classical and contemporary Muslim Scholars in order to know the true spirit of Muslim International Law. Understanding the nature of relation between Muslim and non-Muslims depends on the understanding the division of the world.

Division of the World

The concept of territory in Muslim International Law plays an important role. The rights and duties of the citizens of Muslim state are associated with their residence within or out



of its territories. It also amounts to change the nature of various juristic and legal issues like distribution of booty, status of *Ribā*, voidable contract and the territorial jurisdiction of the courts of Muslim state. The division of the world is based on the primary sources of Shari'ah as other juristic issues are derived from the primary sources. Madīnah became the domain of Islam (*Dār al-Islām*) after the migration of the Prophet (peace be upon him) and Makkah became the domain of war (*Dār al-Ḥarb*). Muslims were ordered to migrate to Madinah. Those who did not migrate, their rights and privileges as the citizens of Muslim state were suspended (Ahmad, 2012). Besides this, Muslim state was only bound to support logistically with respect to protect the religion of such people if the Muslim state had no peace treaty with the state in which they were living (Al-Qur'ān, 08: 72). With reference to the notion of relations between Muslims and non-Muslims, Muslim jurists divide the world into three parts. The first one is the Domain of Islam (*Dār al-Islām*) domain of disbelief (*Dār al-Kufr*) and domain of treaty (*Dār al-'hd*) (al-Kāsānī, 1986). Keeping in view the division of the world into different parts does not relate to the notion of perpetual war (Ahmad 2012). It is not necessary that negation of the division of world negate the concept of perpetual war and similarly the division of the world does not cause a perpetual war between Muslims and non-Muslims. The hostile or peaceful relations between Muslims and non-Muslims does not directly link to the division of the world. Division of the world is directly linked to the rights and duties of the residents and to the territorial jurisdiction of the courts of Muslim state (Ahmad 2012). If anyone resides beyond the territory of Muslim state, such person will lose the basic rights towards Muslim state. If someone violates the Islamic Law beyond the territorial limits of Muslim state, the courts of Muslim state cannot entertain such cases. Similarly, it cannot enforce the rights of the citizen of Muslim state beyond the territorial limits because Muslim International Law preserves the rights of those who live in Muslim state like its citizens and its guaranteed persons.

Division of the World by Shaybānī

According to Shaybānī, world is divided into three divisions. The Domain of Islam (*Dār al-Islām*) (al-Kāsānī, 1986), the Domain of Disbelief (*Dār al-kufr*) and the Domain of treaty (*Dār al-'hd*). According to him, the important element in the domain of Islam is the potential of Muslims to implement Islamic law. This means that Muslims are in majority in such state and have the power to implement Islamic Law. The second condition is that a state where Muslims and non-Muslim citizens or guaranteed persons are protected with all respects. This means the domain of Islam is a place where Muslims have the authority to award guarantee and the state has an authority of establishing its writ. Domain of Disbelief (*Dār al-kufr*). *Dār-Kūfar* according Abū Ḥanifa any territory in which Shari'ah does not prevail and the territory is adjacent to the domain of war,



moreover Muslims and non-Muslims who are the citizen of Muslim state, are not protected there as protected in Muslim state. According to Abū Yousaf, and Shaybānī any territory where other than Islamic law is implemented as called the domain of Kūfar (al-Kāsānī, 1986). This is a territory where non-Muslims are physically in power to implement their laws. A state where Muslims have no authority to award guarantee on the behalf of state as in Muslim state. Moreover, Muslim state has neither hostile relations nor peace relation with it. If a Muslim state has hostile relations with a non-Muslim state that state changes its status to the Domain of War. Rules applied to the domain of war are different than the rules applied to the Domain of Treaty. Domain of Treaty (*Dār al-'hd*). *Dār al-'hd*, is a territory of peace with which Muslim state has suspended war and signed the peace agreement. This means a non-Muslim state with which Muslim state has signed a peace agreement.

Division of the World by Imam Al-Shāfi'ī

On the other hand, Imam Al-Shāfi'ī believes in partition of the world in the Domain of Islam and Domain of Disbelief or Domain of War. He does not believe in the territorial impact of both the states (Al-Shāfi'ī, 1990). He asserts that there is no difference between the domain of Islam and domain of war from the obligations of Muslims towards Muslim state. He is of the view that the divine obligations and prohibitions will not be changed with the change of territorial jurisdictions of a Muslim state. It means lawful act in the domain of Islam will be considered lawful in the domain of war and unlawful act in the domain of Islam will be considered unlawful in the domain of war. Territorial changes of Muslim state do not affect the legal status of the injunctions of Islamic law. He says *Hudūd* will also be implemented and the contract of *Ribā* will be void in the territory of war as they are void in the domain of Islam. While Shaybānī and Imam Abū Ḥanīfah believe that the implementation of *Hudūd* laws changes with the change of the territorial jurisdiction of Muslim state. No *Hudūd* punishments will be inflicted on Muslims in a non-Muslim state. All voidable commercial contracts will also be considered valid. From the above explanation, it can be concluded that Imam Al-Shāfi'ī, does believe in the partition of the world into two divisions on the basis of faith. He asserts that there is no territorial jurisdiction in Islamic law. If any Muslim violates the rules and regulations of Islamic law irrespective of the territorial limitations of Muslim state, he will be held accountable by the Muslim state as well as will be held accountable on the Day of Judgement. According to him if a right of a Muslim or non-Muslim the citizen of Muslim state is violated beyond the territorial jurisdiction of the Domain of Islam, in such situation the wrongdoer will be punished if he is captured or enters to the Domain of Islam. According to him, legal protection is granted to Muslims on the basis of faith not on the basis of territory while non-Muslims citizens of Muslim



state is granted protection on the basis guarantee given by Muslim individual or Muslim state (Al-Shāfi 'ī, 1990).

Ḥanābilah endorses the view point of Imam Al-Shāfi'ī regarding the territorial jurisdiction of Muslim state (Ibne Qudāmah, 1968). Ibn e Qudāmah, asserts that for the implementation of *Qisās*, it is not necessary that the cause of action would be took place in the domain of Islam. *Qisās* will also be implemented even the cause of action tool place in the Domain of War. According to him, *Ḥadde Qadhif* will be implemented even beyond the Domain of Islam because the order of Allah regarding *Ḥadde Qadhif* is common not limited to the domain of war. every Muslim is bound to follow Islam without the discrimination of territorial jurisdiction. The rights of Muslims will be protected by Muslim state even beyond the territorial jurisdiction of Muslim state (Ibne Qudāmah, 1968).

Division of the World by Mawdūdī

Mawdūdī divides the world on the basis of faith into two parts Islam and *Kufr*. On the basis of this division, Muslims are one nation. Muslims' properties bloods and honors are protected. They are equal in the eye of law, they have equal rights and duties. All of them are bound to follow Islamic law wherever they are. On the other hand, non-Muslims are another separate nation. Due to this discrimination of religion, the relations between Muslims and non-Muslims are hostile and peaceful relations are an exception to this rule. He asserts war between Muslims and non-Muslims is hypothetically or theoretically rather practically. Due to this religious differences between Muslims and non-Muslims, permanent and forever friendship and peace agreement will not be concluded. On the basis of this principle, every non-Muslim is to be considered as alien till he accepts Islam. According Mawdūdī the world is also divided into parts on the basis of constitutional law. Domain of Islam (*Dār al-Islām*) and Domain of Disbelief (*Dār al-kufr*). According to him, Domain of Islam is a territory where Muslims govern their state and Islamic Law is either implemented practically or at least they have the power to implement it (al-Mawdūdī, 1999). On the other hand, the Domain of Disbelief is a territory where non-Muslims govern it and Islamic Law is not implemented. All inhabitants are constitutionally protected (*Ma'sūm*) that is the blood, property and honor of them are protected irrespective of their nation, religion, ethnicity language discriminations. Conversely whosoever resides beyond the territorial jurisdiction of Muslim state is not protected. Principally under the Islamic Constitutional Law protection is linked to the territorial jurisdiction of Muslim state. Muslim state is not bound to protect even a Muslim who resides beyond the territorial limits of Muslim state by virtue of its constitutional responsibilities. By the virtue of faith (*Diyānatan*) every Muslim is bound



to follow Islamic law wherever he resides while *Qādhā'n* a Muslim is only bound to follow the Islamic Law who resides in the territorial jurisdiction of Muslim state. If a Muslim violates any rule of Islamic law, the court of a Muslim state can only ask for it if the criminal act is done within the territorial limit of Muslim state. It can be concluded that constitutional division of the world does not link to cause of war or hostility between Muslims and non- Muslims. It only amounts to the territorial jurisdiction of Muslim and non- Muslim states.

The Status of Occupied Territory

The status *Dār al-Islām* is not changed to the status of *Dār al- Kufar* by the occupation of non-Muslims and vice versa. According to Abū Yūsuf and Shaybānī, the status of *Dār al-Islām* will be changed into the status of *Dār al- Kufar* when non-Muslims take the actual possession of the aforementioned territory and implement other than divine laws (al-Kāsānī, 1986). It means that the domain of Islam will not be changed by occupation into the domain of disbelieve unless non-Muslims apply their own laws and obviously non-Muslim can apply their laws only when Muslims lose their power and non-Muslims became strong. While Abū Ḥanīfah has added two more elements to change the status of *Dār al-Islām* and become *Dār al- Kufar* firstly, adjacent to the domain of disbelieve and suspension of Muslims and non-Muslim citizens protected by Muslim state (al-Kāsānī, 1986). The logic for the conditions of Abū Ḥanīfah, the first one, the occupied territory of Islam Adjacent of the domain of war is the sign of power and permanent presence of non-Muslims. If the occupied *Dār al-Islām* is not adjacent to *Dār al- Kufar* in such situations Muslims can easily snatch the occupied territory back from non-Muslims. The last condition is the protection of Muslims it means if the authority to award guarantee to non-inhabitants of the territory was in Muslims hands that constituency will be called *Dār al-Islām* and if the authority of granting the guarantee in non-Muslims hands then the territory will be called *Dār al- Ḥarb*.(Ahmad. 2008). Similarly, *Dār al- Ḥarb* will not be change into *Dār al-Islām* by occupation of Muslim army. The occupied territory will be considered the domain of Islam when Muslim rulers implement Islamic law practically there. Sarakhsī says implementation of Islamic law by Muslim rulers in any territory is the sing of supremacy and power of Muslims (al-Sarakhsī, 2000). If Muslims rulers occupy the territory of *Dār al- Ḥarb* and then apply Islamic law, there then that territory will be considered the domain of Islam. Or Muslim ruler announces that the occupied territory is the part of *Dār al-Islām*. In other words, that the immovable property of the domain of war or disbelieve will be considered the part of the domain of Islam either by implementing Islamic laws there or by announcement of Muslim rulers. While movable property of non-Muslims snatched by Muslim army during war will be considered the ownership of Muslims if that is transferred to the domain Islam. According to Ḥanafīyyah



the ownership of the movable property of non-Muslims will not be transferred to the Muslim army by snatching from them but it must be transferred to the domain of Islam. This property will not be distributed among Muslim army in the domain of war but it will be distributed in the domain of Islam (Al-Kasānī, 1986). Once the Muslim ruler annexes the occupied territory to the domain of Islam, he is bound by virtue of ruler to defend that territory. While contemporary international legal order does not reflect occupation or annexation to be a sound base for getting territory (Ahmad, 2008).

Impact of the Division of the world

Al- Shāfi'ī and Ḥanābilah also believe in the partition of the world into two parts. But they divide the world into two parts on the basis of faith that *Dār al- Kufr* and *Dār al- Islām* similarly they do not believe in the partition of world into parts on the basis of territory. They are of the view that Islamic Law does not recognize the partition of the world on the basis of territorial limits. According to them the domain of Islam and war have the same statuses, anything permissible in the *Dār al-Islām* will also be permissible in *Dār al- Ḥarb* and vice versa. While Shaybānī believes in the legal impact of territorial jurisdiction. According to him, territory changes the impact of some of Islamic laws like: Guaranteed aliens will only be subject to the transactions which are contracted in Muslim state but not to those which took place beyond the territorial jurisdiction of Muslim state. Shaybānī asserts when a group of aliens (*Ḥarbīs*) enters to the [domains of Islam] with proper permission, no intervention will be made in whatever mutual debts and contracts have taken place among them in the domain of war. But the contracts made in domains of Islam will be followed by them. According to Sarakhsī, for a *Ḥarbī* it is not necessary to get all the benefits of the previous contracts done by him/her on the entering to the domain of Islam. Muslim state is only bound to address the grievances of its citizens or its guaranteed aliens which took place within the territorial jurisdiction of Muslim state (Al-Sarakhsī, 1993).

According Shaybānī, Muslim *Mustā'min* is a person who seeks guarantee in alien state (Al-Sarakhsī, 1993). It means that a Muslim can also be a *Mustā'min* if he gets the guarantee from an alien state. Shaybānī says that a Muslim or a non-Muslim citizen of a Muslim state can also be given guarantee by an alien state. Once the guarantee is given by the alien state the guaranteed person is bound to follow the domestic law of the state and the other conditions that are agreed. The said guaranteed person is not bound to follow the alien state for international affairs in a situation when Muslim state aggresses on the alien state. In such situation the guaranteed person even can help logistically and non-logistically the Muslim state against the alien state during war with Muslim state. Shaybānī allows the guaranteed Muslims of alien state to take their appropriate portion



from the booties and spoils of war (Al-Sarakhsī, 1993). From the above argument of Shaybānī we can conclude the aforementioned guaranteed person cannot help any other state beside the Muslim state in the condition of war. A guaranteed Muslim is not allowed to violate the rules and regulations of the alien state in which he resides a guaranteed person in case it will be considered the treachery of the guaranteed person which is strictly prohibited by the Hadith of the Prophet (peace be upon him) (al-Būkhārī, 2002). So the guaranteed Muslim should be careful about his pledge even in alien state otherwise he will be punished on the Day of Judgment. According to Shaybānī a guaranteed Muslim of an alien state is not allowed to get released his slave girl from the possession of aliens or to have a sexual intercourse with her. The reason behind this point is that when property is transferred from the jurisdiction of a Muslim state to an alien state automatically entitles the ownership of the alien state (Al-Sarakhsī, 1993). *Abū y'ālā* also supports this view point of Shaybānī (Yala, 2000). There is an exception to this rule of law that if the slave girl is either *an Umme walad* or *Mudabbārah* then the guaranteed person can restore their possession forcefully and can intercourse them sexually. Any action taken for this purpose will not be considered treachery by the guaranteed person. This exception is based on the rule of Islamic Law of Slavery (ILS) that *Umme walad* and *Mudbārah* cannot be separated from their master and neither will be occupied as slaves for another term and will be set free on the fulfillment of the respective conditions (Al-Sarakhsī, 1993).

According to Shaybānī a prisoner in an alien state can use all kinds of measures for freeing himself and his slaves from the occupation of aliens. In this situation he is allowed take the possession of his slave girl by force, any other illegal means or stealing her. He is also allowed to kill any one the aliens and steal their properties as well. Muslims and non- Muslim citizens of a Muslim state can make property in any alien state through trade and business. According to Shaybānī their properties cannot be declared as spoils or booties by Muslim state with exception to immovable properties. This rule of law of declaring the immovable properties of Muslims and non- Muslims who were the guaranteed residents of an alien state, follow the famous rule of Shari'ah that a shadow rule is followed by the actual rule of law. The adult slaves of the guaranteed Muslims of an alien state, who are captured in war against a Muslim state, will be considered the property of the Muslim state and not the property of their masters. Such slaves will be dealt and distributed like other common slaves. According to Shaybānī only marriage of a woman with a Muslim is not sufficient to save her from being a captive. Either she has to become a Muslim or prove herself the non- Muslim citizen of a Muslim state otherwise she will be made captive if a Muslim state conquers an alien state. Furthermore, her pregnancy if results a child the expected child will also be considered captive as the shadow rule of law follows the actual rule of law. According to Shaybānī only two things



create immunity of life, honor and property that are the acceptance of Islam or being a citizen of a Muslim state (Al-Sarakhsī, 1993).

In case of conquering an alien state by a Muslim state, all the deposits of Muslim and non-Muslim guaranteed persons will be restored to them even if these are distributed as booties or spoils. In case of their death their deposits will be restored to their legal heirs. Guaranteed Muslims and non-Muslims of a Muslim state lose their right of guardianship over their manumitted non-Muslim slaves in an alien state if it is conquered by the Muslim state. Manumission in an alien state is considered null and void according to Shaybānī and Abū Ḥanīfah. Muslim as a trader, prisoner or someone who has embraced Islam in an alien state cannot award guarantee to the citizens of an alien state (Al-Sarakhsī, 1993). *Ibn Qudāmah* recognizes the guarantee given by a Muslim trader or prisoner due a Hadith of the Prophet (peace be upon him) which makes all Muslims capable of awarding guarantee without the specification of their legal statuses (Ibn Qudāmah, 1968). Shaybānī says, the guarantee given by Muslim army on the behalf of Muslim state in an alien state will be considered as valid (Al-Sarakhsī, 1993).

If a guaranteed Muslim makes transactions in an alien state or does any wrong act with the properties of aliens beyond the territorial jurisdiction of Muslim state, the court of Muslim state will have no jurisdiction to address such legal issues. According to Abū Ḥanīfah and Shaybānī the illegal transactions done by Muslims in an alien state will have no effect in a Muslim state because Muslim state has no jurisdiction to have a trial of such cases. Abū Yūsuf declares such illegal and void transactions done by a Muslim anywhere is bound to obey Islam and Islamic Law. If any Muslim abridges Shari'ah rules, wherever he is will be held accountable for its consequences in Muslim state. Shaybānī asserts, if a Muslim enters to *Dār al-Ḥarb* after seeking guarantee and makes the transactions of debts with the people of that territory or they take each other's property forcefully, Islamic court will not hear such cases. Likewise, if a guaranteed Muslim exchanges one *Dirham* with two on cash or on credit or he makes the contract with them involving liquor or pork, there will be no harm because he is taking their property with their willingness and this is lawful according to Abū Ḥanīfah and Shaybānī while unlawful according to Abū Yūsuf. On the other side if a *Ḥarbi* comes to us as a *Mustā'min*, Muslim cannot make with him these kinds of contracts in *Dār al-Islām* (Al-Sarakhsī, 1993). When a guaranteed Muslim kills an alien, or destroys his property in an alien state will carry no consequences for a Muslim state therefore the court of Muslim state has no jurisdiction to hear such cases. Similarly, if aliens kill a guaranteed Muslim in alien state they will not be demanded for the retaliation or blood money through Muslim state. In alien state the affected parties are not liable to claim for any damages or retaliation through Muslim state. Shaybānī asserts, if a Muslim enters to *Dār al-Ḥarb*



after seeking *Amān*, kills a *Ḥarbi* or destroys the property of *Ḥarbi*, he will not be liable to pay any compensation after his return to *Dār al-Islām*. Same will be the case if *Ḥarbīs* kill him in their territory. Shaybānī says I do not like a Muslim who enters to *Dār al-Ḥarb* with the permission of *Ḥarbīs* to deceive them there. This is not allowed for him because his *Dīn* does not allow him to commit any kind of treachery there. If he deceives them and takes their property to *Dār al-Islām*, Shaybānī says I do not like the Muslim to buy that property if they know about it. However, if anybody buys it I will consider the sale contract lawful. If a property which a Muslim *Mustā'min* took from *Dār al-Ḥarb* is a slave girl, and he sales out her in *Dār al-Islā*, the buyer should not have sexual relation with her. If *Ḥarbīs* acquire prisoners from other non-Muslim, the Muslim *Mustā'min* may buy from them. If the people of the territory in which a Muslim *Mustā'min* lives, become captives by someone else, he can also buy from them captives. According to Shaybānī, the third part of the division of the world is the domain of peace treaty. He says if a person who belongs to a state with whom Muslim state has armistice to a peace agreement enters to a Muslim state without seeking guarantee, such person will be considered a guaranteed person. Such person will be considered as a party to the previous contact. According to Sarakhsī such person will be protected anywhere he resides even beyond the jurisdiction of Muslim state by the virtue of peace agreement with his mother state (Al-Sarakhsī, 1993).

Peace treaty plays a vital role in the restoration of peaceful relations between the agreed states but does not change the territorial differences of the state parties. Due to peace treaty, the territory of non- Muslim state will not be considered the domain of Muslim state. Shaybānī asserts, if any Muslim enters to the territory with whom Muslim state signed the peace treaty and makes the contract of *Ribā* there in such situation court of Muslim state has no jurisdiction to hear the case. Because according to him peace treaty changes the status of hostility to peaceful relations but does not merge the two different territories (domain of Islam and war) into the same territory. Similarly, if another state attacks on the state with whom Muslim state has peace treaty, in such case Muslim state is not bound to defend the ally state (if and only if not agreed in the contract) because a simple peace contract does not acquire the status to the domain of Islam. According to Shaybānī, if anyone whose country has a peace treaty with Muslim state enters to the domain of Islam without any guarantee he will be considered as guaranteed person. If such person makes any unlawful contract with Muslim or non-Muslim citizen of Muslim state courts will declare the illegal contracts as void. In such situation the territory of Islam makes such contract void if such contract is made beyond the territorial limit of the territory of Islam then courts do not have the power to declare it void (Al-Sarakhsī, 1993). Due to difference of territory (*Dār*) with difference of religion of spouses, the contract of marriage is come to an end automatically (Al-Qur'an, 60:10).



Discussion regarding the relationship between Muslims and non-Muslims always goes around the notion of the cause of war. classical and contemporary scholars discuss that the cause of war is either infidelity, division of the world into different parts or diversity of religion.

Cause of War in Muslim International Law

There are three different views of Muslim jurists about the under discussion topic. Muslim scholar like Imam Al-Shāfi'ī is of the view that the relationship between Muslims and non- Muslims is hostile and he says Muslims will persistently fight against non-Muslims till they accept Islam (Al-Shāfi 'ī, 1990). If Muslims are weak and have no sufficient power to fight with non- Muslims then Muslim may be peaceful with non-Muslims (Al-Shāfi 'ī, 1978). According to him, Jihād has undergone through four phases: two phases were before Migration to Madinah and two were after Migration to Madinah. At the first phase when the Prophet (peace be upon him) was in Makkah, was ordered to focus on the worship of Allah and to invite people to Islam (Al-Qur'an, 15:97,98,99). At this phase Allah had instructed the Prophet (peace be upon him) to focus on worship and to be patient on the painful behavior of pagans of Makkah. The second phase was detachment from non- Muslims (Al-Qur'an, 06:68). At this phase the prophet (peace be upon him) was ordered not to enjoin those people who were disregarding Islam by their actions. The third phase through which Jihād undergone after the Migration to Madinah when Islamic state was established and Muslims were in a position to defend themselves by fighting against Pagans of Makkah by allowing Muslims to fight against their enemies who had displaced them from their homes and who were presenting hindrance in establishing the divine order of Allah (Al-Shāfi 'ī, 1978). At the fourth phase Jihād was made obligatory for all Muslims to maintain it till to the dooms day (Al-Qur'an, 02:216). In the context of phase four Al-Shāfi'ī is of the view that Jihād will be fought against Pagans till they embrace Islam while ahl-e-kitab (People of the Book) will be compelled either to embrace Islam or to submit to the writ of Allah and pay the poll tax. If Muslims do not have the power to fight with both of them then peace contract may be signed with them (Al-Shāfi 'ī, 1978).

According to Imam Sarakhsī and Imam Shawkāni a perpetual war will be continued against non- Muslims till the doomsday or till the culmination of mischief and peace is to be considered in exceptional cases especially when Muslims are incapable to fight Jihād (al-Shawkāni, 1999). According to them if war is started by Muslims then every adult and capable Muslim is bound to participate in it and if war is started by non-Muslims then war be optional (Farz Kifā'e) (Khallaf, 1350 hijri). Sarakhsī is also of the view that Jihād is introduced in four phases in Islamic culture (Al-Sarakhsī, 1993). At the earliest



stage the Prophet (peace be upon him) was instructed to forgive the Pagans and to observe patience towards them not to take any revenge (Al-Qur'an, 15:94). The second phase was to invite non- Muslims to Islam with wisdom and beautiful preaching (Al-Qur'an, 16:125). According to him the third phase of Jihād is known as defensive war against non- Muslims who fight with Muslims even Muslims are permitted to kill them in Masjid ul Haram but if they surrender and want to be peaceful then Muslims are allowed to make a contract of peace with them (Al-Qur'an, 22:39,40). From the arguments of Sarakhsī it may be concluded that Jihād is obligatory in situation if Muslims are invaded by non- Muslims which is called defensive Jihād . Moreover, according to Sarakhsī Muslims are only allowed to be peaceful when they're logistically weak. There a question of continuing war arises that how Jihād is to be waged against non-Muslims especially when they want peaceful relations with Muslims. The fourth and last phase of Jihād is aggressive Jihād. Allah commands the Prophet (peace be upon him) to fight with non-Muslims wherever you find them till there remain no persecution on the earth. According to Sarakhsī, Allah has made the war obligatory on Muslims till the culmination of persecution and the establishment of peace and justice. The fourth phase of Jihād (Qital) will be continued till the Doomsday. Sarakhsī argues from the Hadith about war against non- Muslims till the establishment of the writ of *La ilaha illAllah* throughout the globe (Al-Bukhari, 2002).

Shaybānī discusses the issue of the cause of war as other classical scholars discussed. He is of the view that Muslims should invite non-Muslims to Islam before starting any war against them. He is of the view that if Muslims are going to start fighting against non-Muslims in the battle of war then Muslims should also invite them to Islam before killing them. He argues from the verse of the Qur'ān which orders inviting people to the way of Allah with wisdom and etiquettes (Al-Qur'an, 16:125). Due to this, the Prophet (peace be upon him) was used to order commander-in-Chiefs to invite non- Muslims to the way of Allah (Al-Sarakhsī, 1993). Imam *Kasānī* has a bit different view from Shaybānī, according him Muslims are bound to invite non-Muslims to the way of Allah in the battle of war. Being not inviting non-Muslims to Islam, participation in war is not obligatory for Muslims. That is to leave non- Muslims not pretending of being not invited to Islam (Al-Kāsānī, 1986). While Shaybānī says it's a matter of fairness for Muslims to invite non-Muslims to Islam. He further says if non-Muslims are already invited to Islam, in a such situation it will also be a matter of justice for non-Muslims to offer them for paying poll tax before starting war against them (Al-Sarakhsī, 1993). According to him all non-Muslims other than the pagans of Arab and apostates will be offered poll tax based on the verse of the Qur'ān (Al-Qur'an, 09:29).



From the above viewpoint of Shaybānī, it seems that Shaybānī does not believe that the cause of war is infidelity. He focuses on inviting non-Muslims to Islam or poll tax before waging war against them. He differentiates that those non-Muslims who are not invited to Islam will be invited to accept Islam and those who are invited to Islam but they did not embrace Islam in such a situation they will be offered to pay poll tax and live in Muslim state peacefully as non-Muslim citizens (Al-Sarakhsī, 1993). If the view point of Al-Shāfi‘ī and Ḥanbālī School of thoughts regarding the cause of war is accepted, then the exceptions announced by the Prophet (peace be upon him) that is not to kill the children and women of non-Muslims in war and all those who are not combatant will not be met. Moreover, if the cause of war is infidelity then the war against non-Muslims will be continued till their total subjection to Islam and it will become difficult to act upon the commandment of Allah of no compulsion in the case of non-Muslims (Al-Qur'an,02:256) Furthermore, due to the acceptance of the view, non-Muslims will have only one option of accepting Islam. This view point results a perpetual enmity between Muslims and non-Muslims. This will also make the living of non-Muslims in a Muslim state permanently in lieu of giving poll tax or temporary by getting guarantee from Muslims void and illegal. By accepting this point of view peace relations with non-Muslims will be considered prohibited while the Qur'ān does not prevent Muslims from making good relations with non-Muslims who are peaceful to Muslims (Al-Qur'an, 60:8,9). Moreover, any peace treaty with non-Muslims will also be considered prohibited while the Prophet (peace be upon him) by himself did a peace treaty with the pagans of Makkah. Similarly, giving any guarantee to non-Muslims will also be considered unlawful while Allah orders to give guarantee to non-Muslims if they seek it (Al-Qur'an, 09:06).

According to Shaybānī the cause of war is aggression. He asserts that if pagans of Arab are captured by Muslims being causing no aggression they will not be killed even they refuse to accept Islam (Al-Sarakhsī, 1971). From the above explanation of Shaybānī, it is clear that if the pagans of Arabs are captured in aggression then they will be offered to accept Islam in case of refusal they will be killed. According to him aggression makes the blood of non-Muslims permissible to be shed. Ibn Qayyim al-Jawziyyah also endorses the view point of Shaybānī and asserts that the cause of war against non-Muslims is aggression not infidelity. He further says that war is obligatory for Muslims against those non-Muslims who are belligerent not against all non-Muslims. He gives logic for this rule of law that the Prophet (peace be upon him) used to fight against those who did aggression against Muslims (Al-Jawziyyah, 1997). Now it's become important to mention Shaybānī's view point regarding the pagans of Arab and apostates.



According to Imam Ibn Taymiyyah, Jihād in the first stage was prohibited and was just to invite non- Muslims to Islam. Ibn Taymiyyah is of the view that at first stage the Prophet (peace be upon him) and the earlier Muslims were weak to fight against non-Muslims that is why they were just inviting non- Muslims to the way of Islam. When the prophet (peace be upon him) migrated to Madinah and established Islamic state then Allah gave permission to fight against those who were fight with Muslims. This kind of defensive war is known as second phase of Jihād and war. Later on when the Islamic state of Madinah became stronger and capable of offensive war then Allah made *Qitāl* as obligatory act on Muslims. According to him Muslims were prohibited to fight with those who were not fighting with Muslims. If Allah were ordered them to fight with all non-Muslims then at that time it was impossible for Muslims to fight against all non-Muslims, this was the third phase. When Makkah was conquered by Muslims and huge people accepted Islam then Allah made *Qitāl* obligatory on Muslims against all non-Muslims. Muslims were ordered to revoke all the peace contracts that were unlimited with respect to time and to maintain only time limited peace contracts with non-Muslims (Ibn Taymiyyah: n.d). In addition to the classical view point of Jurists Surah Muhammad verse no.04 can also be quoted in which Allah has ordered Muslims to kill non-Muslims or enslave them wherever they find them till the culmination of *Fitnah*(Al-Qur'an, 47:04).

The classification of the phases of *Qitāl* by ibn Taymiyyah is a bit different that from the classification of Al-Shāfi'ī and Sarakhsī. According to Imam Shāfi'ī the third phase of *Qitāl* is only to defend Muslim state while Ibn Taymiyyah makes the defending Muslim state is obligatory Ibn Taymiyyah makes the fourth phase of *Qitāl* obligatory against all non- Muslims whether they have invaded or not on Muslim state. According to ibn Qayyim al-Jawziyya the Prophet (peace be upon him) was ordered when he was in Makkah to invite the people to Islam and *Qitāl* was prohibited. When the Prophet (peace be upon him) migrated to Madinah, he was given permission to fight against the invaders to defend the Islamic state. Later on the Prophet (peace be upon him) was ordered to fight against all non-Muslims till the culmination of *Fitnah*. The last stage was the revelation of Surah Tawbah, Allah ordered to fight with ahl-e- Kitab till they accept Islam or pay the poll tax. In continuation Allah ordered to fight with those pagans who had violated peace contract. According to the aforementioned Surah, fighting with pagans with whom Muslims had signed peace contract and who abide by their contract, war was postponed till the expiration of the specified period. Those pagans with whom Muslims had signed a peace contract of unlimited time, Muslims were commanded to give them a time of four months to start fight against them. According to Ibn Qudāmah al-Ḥanbali the permanent relation between Muslims and non- Muslims is hostile not peaceful. According to him the peace agreement with non- Muslims would be legal only if it fulfills three conditions: First when Muslims are weak and they do not have the power to fight against non-



Muslims. Second due peace agreement Muslims will become strong logistically. Third peace agreement with non-Muslims should be for limited time because peace agreement for unlimited time suspends the spirit of Jihād (Ibn Qudāmah, 1968).

From the above arguments of the jurists, it is concluded that the relations between Muslims and non-Muslims are built on hostility basis. Peace relations will only be maintained in a situation when Muslims are weak and do not have enough power to fight (Ibn Taymiyyah n.d). Furthermore, non-Muslims (other than non-Muslims from Arab) have only two options either to accept Islam or pay the poll tax. While non-Muslims from Arabs were subject to either to accept Islam or to be killed (Khallaf, 1350 Hijri). Moreover, the last phase of *Qital* against non-Muslims is absolute and unconditional. The saying of the Prophet (peace be upon him) regarding *Qital* against non-Muslims till they embrace Islam (Al-Bukhari, 2002). The forbiddance of friendly relationships with non-Muslims support the view point of these jurists (Al-Qur'an,05:51). Lastly the killing of those non-Muslims is just to whom Islam is being presented to them and who rejected it and who have waged war against Muslims or not (Khallaf, 1350 Hijri).

The viewpoints of these jurist may be accepted on historical grounds that the concept of war has passed through different phases. This is not only special with Jihād and *Qitāl* but applicable to majority of Shari'ah commandments. The first phase was forgiveness the second was to invite the people to Islam, the third was about the permission of war that was to fight those who start fighting you and the fourth was staging war to against all non-Muslims till doomsday. The concept of these scholars regarding the last phase of perpetual war against all non-Muslims till the Doomsday may require to be proved valid in different space and time. There are several verses of the Qur'ān that reveal basis for peaceful relationship between Muslims and non-Muslims. Besides, this the underpinning arguments of the Classical Muslim Jurists (CMJ) may be concluded a result of Muslims dominance in their age and the approach of the Contemporary Muslim Scholars (CMS) may be a result of the contemporary slavery of Muslim Ummah through which it passes. Collective nation's psychology affects nations' worldview. Therefore, it becomes needful that both kinds of verses which are interpreted in supporting war and peace for the relationships of Muslims and non-Muslims may be studied in their contexts, reasons to their revelation (*Asbabe Nuzūl*) and historical backgrounds keeping in view the psychology of the age in which these are interpreted.

View Point of Contemporary Muslim Scholars

The contemporary Muslim scholars like Wahbah Zūhaily, Abdul Wahab Khallaf and Abu Zahrah do not accept the view point of hostility of relations between Muslims and non-



Muslims. Wahbah al- Zūhaily is of the view that the relationships between Muslims and non- Muslim are based on peace and harmony and war is exceptional or casual to it and only allowed to restore peaceful relations According him even war does not suspend peaceful relationships between Muslims and non- Muslims. Furthermore, war can only be waged to defend Muslim state or to eradicate hindrances from the way of preaching Islam (Zuḥaylī, 1998). The following arguments support the peaceful relationships between Muslims and non-Muslim states.

- 1- Muslims have to fulfill their agreements with non- Muslims.
- 2- Islam respects Mankind and does not want to see it being ruined and disgraced through war.
- 3- Rules of reciprocity in the context of peaceful relationships must be adequately implemented by Muslim state
- 4- Islam supports and maintains justice for all humans irrespective of their religion and other discriminations.
- 5- Islam does not support cruelty and inhumane behavior with aliens even in war but promotes mercy and kindness even in war with all humans (Zuḥaylī, 1998).

According to Zuḥayli, the verses of Surah al-Hajj related to *Qital* give the right of self-defense, to stand against any injustice to Muslims. Before this the right of self-defense was illegal and prohibited for Muslims. The verses have explicitly mentioned reason to fight against Pagans of Makkah because they're persecuted by the Pagans and were displaced from their lands. The verses of Sūrah al-Baqarāh relevant to *Qitāl* make the war obligatory for Muslims against those non- Muslims who fought with Muslims and who were not letting Muslims to practice their faith freely. He further explains that verses of the Qur'ān which invoke Muslims to fight against non- Muslims are situational permissive especially when non- Muslims prevent Muslims from practicing their faith according to Islamic law or a situation of continued war (Al-Qur'an, 04:75). The verses of Sūrah al-tawbāh related to *Qitāl* of non- Muslims are related to the killing of those non-Muslims have breached a peace contract with Muslims by means of treachery (Zuḥaylī, 1998).

According to Abdul Wahab Khallaf, the base of relationships between Muslims and non-Muslims is peace. War is only allowed in case of tyranny by non- Muslims or any hindrance they present in the way of preaching of Islam. According to him, verses related to *Qitāl* either revealed in Makkah or Madinah which allow Muslim to fight against non-Muslims due reasons they cause to be killed by Muslims. Non- Muslims in Makkah and Madinah were used to torture Muslims. They embargoed Muslims economically and socially and ejected them from their homes and lands. That is why Muslims were ordered



to fight with non- Muslims till to eradicate hindrances from the way of preaching Islam and to be restored to their homes from where they were knocked out. Muslims wanted to achieve their goals by peaceful means but non- Muslims were not ready to give them way to be succeeded in the achievement of their goals and targets. Allah allowed Muslims to fight with those pagans who were active in presenting hurdles in their way and who were ready to fight with Muslims. Moreover, all jurists are unanimously agreed that non-combatants will not be killed in war. War is allowed against those who fight with Muslims. Converting non- Muslims forcefully to Islam is against the spirit of Islam (Khallaf, 1350 Hijri).

Muhammad ‘Abdhū is proponent of peace being the base of Muslims and non-Muslims relationships. He is of the view that all battles that had fought by the Prophet (peace be upon him) were defensives (Abdhū, 1990). He has mentioned three arguments in his support. The first one that the Pagans of Makkah did eject the Prophet (peace be upon him) from his native land Makkah. Second one that they were continuously torturing the newly converted Muslims. The third one is they were becoming hindrance in preaching Islam.. According to him, the verses of Surah ale Imran related to *Qitāl* were revealed after the battle of *Uhud*. In this war the Pagans of Makkah were the aggressors. The verses of Surah al-Anfāl related to *Qitāl* were revealed after the battle of Badar in which the Pagans of Makkah were also aggressors. The verses of Surah al-Tawbah related to *Qitāl* were revealed when the Pagans of Makkah had breached the peace treaty of Hdaybiah (Al-Qur'an, 09:13) According him the war in Islamic law is only permitted to defend Muslims and Muslim state. He is not of the view that Islam can be preached by means of aggression (Abdhū, 1990). Muhammad Rafat Usman also agrees with contemporary view point regarding relationships between Muslims and non- Muslims. He says the objective of Jihād is to seek the guidance of Islam not to kill non- Muslims. Peace is a general rule while war is an exception (Usman, 1991). In addition to the contemporary view point, verses number 8 and 9 of Surah al- Mumtahinah can also be presented which urge Muslims to do good with those non-Muslims who do not displace Muslims and do not fight with them. If perpetual killing is the Divine demand then how Divine orders to do good with non- Muslims (Al-Qura'an,60:8,9). Similarly, Surah al-Anfāl and Surah al- Nisa’ verse no. 61 and 90 respectively urge Muslims to be kind in contracting peace if non- Muslims tender to it (Al-Qur'an, 04:90). In this verse Allah says if non-Muslims want to fight you, fight them also and if they tender towards peace and harmony then give them peace and tranquility. There are Hadith which clearly indicate that the relations between Muslim and non-Muslim is peace not hostile (Al-Bukhari, 2002). They clearly prohibit Muslims from wishing fight with non- Muslims. This prohibition indicates that relationships between Muslims and non- Muslim are based on promoting peace and not hostility. The third view is of Ibn Taymiyyah and Ibn Qudāmah



h which is quite unique in its nature. He is of the view that if Muslims are weak in deterrence then relations between Muslim and non- Muslims will be built on the doctrines of peace and harmony that is to get strengthen against aliens and enemies of Islam but if they find themselves stronger enough to bring a successful change then they will adopt aggressive relations with non- Muslim and will keep the enemies of Islam depressed and subservient in paying poll tax and other reciprocal duties. So the cause of war between Muslims and non-Muslim is not infidelity but it depends on the response of non-Muslims towards Muslims' invitation to Islam. If non-Muslims other than pagans of Arab and apostates agree to pay the poll tax, their blood, property and honor will be protected instead of their infidelity. In such situation the relations between Muslims and non-Muslims are peaceful. If they reject these two options, then they will be considered aggressors.

Conclusion

This article is concluded that the relation between Muslim and non-Muslim is neither correlated with the diversity of faith between Muslims and non-Muslims nor the division of the world into different parts. Diversity in faith does not link with perpetual war or perpetual peace. Similarly, division of the world is only correlate the territorial jurisdiction of Muslim state. The inhabitants of Muslim state will be provided complete legal protection by Muslim state and courts will be having the territorial jurisdiction to hear their cases without any religious discrimination. The inhabitants even Muslims beyond the territorial jurisdiction of Muslim state will not be provided with legal protection, means that Muslim state is not bound to protect those Muslims who are not living within the territorial jurisdiction of Muslim state, and their cases will not be heard by Muslim courts because the cause of action happened beyond the territorial limit of Muslim state. The difference of territorial jurisdiction does not necessarily create hostility. MIL considers only aggression is the cause of war between Muslims and non-Muslims either caused by non-Muslim States or group of non-Muslim individuals or even by Muslims residing within the territorial jurisdiction of Muslim state like rebels. The aggression may be either against Muslim state or Muslims individuals who reside even beyond the territorial jurisdiction of Muslim state. Similarly, MIL considers breach of peace treaty or preventing non-Muslims from embracing Islam or compelling Muslims from being not following Islam or making them apostates, as aggression. Any act of Blasphemy against Prophets by non- Muslim state or group of individuals supported by a Nation State is also considered aggression. Other than the situations mentioned above, all the relationships between Muslim and non- Muslim states are considered as peaceful or friendly. MIL does not believe in perpetual war against non- Muslim states and believes in the co-existence with nation states.



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