

Human Rights in Islam

CHAPTER FOUR RIGHTS OF ENEMIES AT WAR

After dealing with the rights of the citizens of an Islamic State, I would like to briefly discuss the rights which Islam has conferred on its enemies. In the days when Islam came into focus the world was completely unaware of the concept of humane and decent rules of war. The West became conscious of this concept for the first time through the works of the seventeenth century thinker, Grotius. But the actual codification of the 'international law' in war began in the middle of the nineteenth century. Prior to this no concept of civilized behaviour in war was found in the West. All forms of barbarity and savagery were perpetrated in war, and the rights of those at war were not even recognized, let alone respected. The laws which were framed in this field during the nineteenth century or over the following period up to the present day, cannot be called 'laws' in the real sense of the word. They are only in the nature of conventions and agreements and calling them 'international law' is actually a kind of misnomer, because no nation regards them binding when they are at war, unless, of course, when the adversaries also agree to abide by them. In other words, these civilized laws imply that if our enemies respect them then we shall also abide by them, and if they ignore these human conventions and take recourse to barbaric and cruel ways of waging war, then we shall also adopt the same or similar techniques. It is obvious that such a course which depends on mutual acceptance and agreement cannot be called 'law'. And this is the reason why the provisions of this so-called 'inter- national law' have been flouted and ignored in every way, and every time they have been revised, additions or deletions have been made in them.

Law of War and Peace in Islam:

The rules which have been framed by Islam to make war civilized and humane, are in the nature of law, because they are the injunctions of God and His Prophet which are followed by Muslims in all circum- stances, irrespective of the behaviour of the enemy. It is now for the scholars to find out how far the West has availed of the laws of war given by Islam thirteen hundred years ago; and even after the adapta- tion of some of the laws of Islam how far the West attained those heights of civilized and humane methods of warfare which Muslims reached through the blessings of Islam. Western writers have often asserted that the Prophet had borrowed everything in his teachings from the Jews and the Christians. Instead of saying anything in its refutation I will only recommend the reader to refer to the Bible⁶ so that he can see which methods of war are recommended by the sacred Book of these Western claimants to civilization and culture.

We have examined in some detail the basic human rights that Islam has conferred on man. Let us now find out what rights and obligations Islam recognizes for an enemy.

The Rights of the Non-Combatants:

Islam has first drawn a clear line of distinction between the combatants and the non-combatants of the enemy country. As far as the non-combatant population is concerned such as women, children, the old and the infirm, etc., the instructions of the Prophet are as follows: "Do not kill any old person, any child or any woman" (Abu Dawud). "Do not kill the monks in monasteries" or "Do not kill the people who are sitting in places of worship" (Musnad of Ibn Hanbal).

During a war, the Prophet saw the corpse of a woman lying on the ground and observed: "She was not fighting. How then she came to be killed?" From this statement of the Prophet the exegetists and jurists have drawn the principle that those who are non-combatants should not be killed during or after the war.

The Rights of the Combatants:

Now let us see what rights Islam has conferred on the combatants.

1. Torture with Fire

In the hadith there is a saying of the Prophet that: "Punishment by fire does not behove anyone except the Master of the Fire" (Abu Dawud). The injunction deduced from this saying is that the adversary should not be burnt alive.

2. Protection of the Wounded

"Do not attack a wounded person"-thus said the Prophet. This means that the wounded soldiers who are not fit to fight, nor actually fighting, should not be attacked.

3. The Prisoner of War Should not be Slain

"No prisoner should be put to the sword"-a very clear and unequivocal instruction given by the Prophet (S).

4. No one Should be Tied to be Killed

"The Prophet has prohibited the killing of anyone who is tied or is in captivity."

5. No Looting and Destruction in the Enemy's Country

Muslims have also been instructed by the Prophet that if they should enter the enemy's territory, they should not indulge in pillage or plunder nor destroy the residential areas, nor touch the property of anyone except those who are fighting with them. It has been narrated in the hadith: "The Prophet has prohibited the believers from loot and plunder" (al-Bukhari; Abu Dawud). His injunction is: "The loot is no more lawful than the carrion" (Abu Dawud). Abu Bakr al-Siddiq used to instruct the soldiers while sending them to war, "Do not destroy the villages and towns, do not spoil the cultivated fields and gardens, and do not slaughter the cattle." The booty of war which is acquired from the battleground is altogether different from this. It consists of the wealth, provisions and equipment captured only from the camps and military headquarters of the combatant armies.

6. Sanctity of Property

The Muslims have also been prohibited from taking anything from the general public of a conquered country without paying for it. If in a war the Muslim army occupies an area of the enemy country, and is encamped there, it does not have the right to use the things belonging to the people without their consent. If they need anything, they should purchase it from the local population or should obtain permission from the owners. Abu Bakr al-Siddiq, while instructing the Muslim armies being despatched to the battlefield would go to the extent of saying that Muslim soldiers should not even use the milk of the milch cattle without the permission of their owners.

7. Sanctity of a Dead Body

Islam has categorically prohibited its followers from disgracing or mutilating the corpses of their enemies as was practised in Arabia before the advent of Islam. It has been said in the hadith: "The Prophet has prohibited us from mutilating the corpses of the enemies" (al- Bukhari; AbC Dawud). The occasion on which this order was given is highly instructive. In the Battle of Uhud the disbelievers mutilated the bodies of the Muslims, who had fallen on the battlefield and sacrificed their lives for the sake of Islam, by cutting off their ears and noses, and threading them together to put round their necks as trophies of war. The abdomen of Hamzah, the uncle of the Prophet, was ripped open by Quraysh, his liver was taken out and chewed by Hind, the wife of Abu Sufyan, the leader of the Meccan army. The Muslims were naturally enraged by this horrible sight. But the Prophet asked his followers not to mete out similar treatment to the dead bodies of the enemies. This great example of forbearance and restraint is sufficient to convince any reasonable man who is not blinded by prejudice or bias, that Islam is really the religion sent down by the Creator of the universe, and that if human emotions had any admission in Islam, then this horrible sight on the battlefield of Uhud would have provoked the Prophet to order his followers to mutilate the bodies of their enemy in the same manner.

8. Return of Corpses of the Enemy

In the Battle of Ahzab a very renowned and redoubtable warrior of the enemy was killed and his body fell down in the trench which the Muslims had dug for the defence of Medina. The unbelievers presented ten thousand dinars to the Prophet and requested that the dead body of their fallen warrior may be handed over to them. The Prophet replied "I do not sell dead bodies. You can take away the corpse of your fallen comrade."

9. Prohibition of Breach of Treaties

Islam has strictly prohibited treachery. One of the instructions that the Prophet used to give to the Muslim warriors while sending them to the battlefield was: "Do not be guilty of breach of faith." This order has been repeated in the Holy Quran and the hadith again and again, that if the enemy acts treacherously let him do so, you should never go back on your promise. There is a famous incident in the peace treaty of Hudaibiyyah, when after the settlement of the terms of the treaty, Abu Jandal, the son of the emissary of the unbelievers who had negotiated this treaty with the Muslims, came, fettered and blood-stained, rushing to the Muslim camp and crying for help. The Prophet told him "Since the terms of the treaty have been settled, we are not in a position to help you out. You should go back with your father. God will provide you with some other opportunity to escape this persecution." The entire Muslim army was deeply touched and grieved at the sad plight of Abu Jandal and many of them were moved to tears. But when the Prophet declared that "We cannot break the agreement", not even a single person came forward to help the unfortunate prisoner, so the unbelievers forcibly dragged him back to Makkah. This is an unparalleled example of the observance of the terms of agreement by the Muslims, and Islamic history can show many examples of a similar nature.

10. Rules About Declaration of War

It has been laid down in the Holy Quran: "If you apprehend breach of treaty from a people, then openly throw the treaty at their faces" (8:58). In this verse, Muslims have been prohibited from opening hostilities against their enemies without properly declaring war against them, unless of course, the adversary has already started aggression against them. Otherwise the Quran has clearly given the injunction to Muslims that they should intimate to their enemies that no treaty exists between them, and they are at war with them. The present day

'inter- national law' has also laid down that hostilities should not be started without declaration of war, but since it is a man-made rule, they are free to violate it whenever it is convenient. On the other hand, the laws for Muslims have been framed by God, hence they cannot be violated.
