

RELIGIOUS BELIEFS AND HUMANITARIAN LAW WITH SPECIAL REFERENCE TO ISLAM

"I sought my God, my God I could not see,
I sought my soul but my soul eluded me
I sought my brother and I found all three."

Asia has been the birthplace of many religions which are now being followed by millions of people all over the world. Religion, tradition and custom have many varieties in the cultures of the world. It is true that in some cases these diversities led to differences and are the cause of conflicts. However diversity in Asia can be an asset, just as the various instruments of an orchestra can produce a wonderful harmony. There is no religion which advocates hatred and killing. Religion should show the importance of love and compassion. All religions more or less speak about the same ideal, namely to lift man to such an ideal position that he can live in a state of natural peace, prosperity, justice and dignity.

If we look at the teachings of the various religions in Asia we find that what stands out most of all is the sense of spiritual values that dominates those teachings and the lives of the leaders of those religions and their followers. All these point to the primacy of the spirit and reveal the longing for the Infinite and the interminable quest for the Divine. Most of the religions stress inner peace and tranquility as the goal of human life.

Besides inner tranquility, other Asian values which give importance to the process of humanization are simplicity and contentment, non-violence and compassion, co-operation, a spirit of adjustment and a deeply rooted communism with nature. The religions stress too that the principle of fellowship or true human religion is respect for the individual human personality. Carried through sincerely, respect for the person spells justice and fairplay and gradually becomes sense of true pity, seeks the good of others, wishes them well and fosters the increase of their happiness and well-being. The spirit of true service is well summed up in the words of Confucius who said, "The filial piety of the present day means to feed one's parents; but even one's dogs and horses receive their food — without reverence, wherein lies the difference?"

If we turn to Hinduism we find that one of the cardinal virtues which is stressed in *ahimsa*, with consists in respect for and consideration for life and fellow feeling with all living beings and is based on belief in the unity of all life. The thesis of Vedic thought known as Hindu religions, regarding the question of human behaviour, is that there abides within the human psyche the triun factors of the human, the animal and the divine. The process of religious unfoldment envisages the conquest and the eradication of the beast in man (called *Pashu*), the purification of the human and direc-

ting of its movement towards ideal ethical life and the awakening of the third factor, the divine, within which constitutes our real and essential nature. The other two aspects, the human and gross animal natures, are only temporarily taken on or superimposed upon the essential, real self or the spiritual nature of the individual.

Ahimsa or non-injury to all living beings is also the core of Jain ethics. Jainism advocates an attitude of equality and designates the whole pattern of religious conduct and philosophical thought that helps to develop such an attitude in religious life. The courses of conduct laid down for the ascetics and the layman are both based on the doctrine of ahimsa. Jainism enjoins the avoidance of all forms of injury, physical or otherwise whether committed by mind, body or speech.

In Buddhism we find that although on the whole it eschews mandatory dogmas and specific injunctions to which the adherent must conform, there are traditional precepts that list the obligations or moralities to be observed. The five precepts for the layman prohibit killing, stealing, engaging in sexual misconduct, lying and drinking intoxicating liquor. There are five additional precepts for monastic novices and laity committed to this stricter discipline: not to eat during prohibited hours, not to take part in festivals and amusements; not to use garlands, perfumes or ointments; not to use a bed or chair that is too large or luxurious and not to accept money for oneself. By emphasising the obligatory nature of charity, hospitality and love for every living being Buddhism revalues ethics as the foundation of society. The Dhammapada, a popular ethical text states — "Abstention from sin, doing good works, and purifying one's mind, this is the teaching of Buddhism" and furthermore "One does not repay with evil, but one repays evil with good". Both in Buddhism and Shintoism we find the concept of compassion (*jihā*) defined as removing sorrow and bringing happiness to others (*bakku-voraku*). The word *bakku* means to remove the fundamental cause of suffering while *voraku* means the giving of pleasure. Both charity and love must be given a practical form to give the concept of *bakku-voraku* a substantial meaning.

In Judaism man is regarded as an ethically responsible person responsive to the presence of God in nature and in history. What is particularly striking is the affirmation that God is not only the source of ethical obligation but is Himself the paradigm of it. In the so-called Code of Holiness (Lev. 19) it is imitation of divine holiness that is offered as the basis of human behaviour in the ethical sphere as well as in the cultic-ceremonial. Concern for the economically vulnerable members of the community; obligations towards neighbours, hired labourers and the physically handicapped; interfamilial relationships and attitudes towards strangers are all motivated by the basic injunctions "You shall be holy, for I, the Lord, your God, am Holy". Acceptable human behaviour is therefore "walking in all His ways" (Deut. 11.22).

Christianity has received the main commandment of its ethic from the Old Testament "You shall love your neighbour as yourself" (Leviticus) but Jesus filled this commandment with a new meaning. He closely connected the commandment "love your neighbour" with the commandment

to love God. In the dispute with the Scribes mentioned in Matthew Chapter 22, he quoted the commandment of Deuteronomy 6:5 "You shall love the Lord, Your God with all your heart and with all your soul and with all your might". He spoke of the commandment of love for neighbour, however, as being equal to it. With that he lifted it to the same level as the highest commandment, the commandment to love God. The Christian church has administered its concern for the sick in a two-fold manner; both by healing the sick and by expressing concern and caring for them. In the Gospels, Jesus appeared as a healer of body and soul. The title "Christ the Physician" was very popular in missionary preaching of the early centuries. This aspect of Christianity has however retreated into the background in modern times. From the beginning however another concern beside healing was care for the sick, an element of the earliest commandments of Christian ethics.

The first office that was created by the church in Jerusalem was the diaconate; it spread rapidly throughout the whole church. According to the Canons of St. Hipolytus, the care of the sick was carried out by the deacons and widows under the leadership of the bishop. This service was not limited to members of the Christian congregation but was directed toward the larger community, particularly in times of pestilence and plague. Soon ecclesiastical places of care of the sick were founded. They were mentioned for the first time during the 4th century and were, for example, supported in Cappadocia by the theologian and monastic reformer Basil the Great.

The Church hospitals and the ecclesiastical nursing care still maintain a leading and exemplary role in the 20th century, although along with the general political and social development of the 19th century the city or communal hospital was founded and over-took the church hospital. Ecclesiastical nursing care always started with church institutions on church territory and spread from there into the realm of the general communal sphere, which leads to a universal extension of Christian care but also to secularization and lay control. The city councils of the growing cities of the Reformation era for example, took over the leadership of the ecclesiastical hospitals. Because the separation of church and state was proclaimed during the French Revolution and the trend to assign ecclesiastical welfare tasks to the state grew, a state hospital system was established alongside that of the church. The state institutions, however, preferred to make use of nurses from Roman Catholic orders or deaconess houses.

The most impressive example of the universal spread of care for the sick was the founding of the Red Cross by Henri Dunant. The religious influence of Dunant's pious parental home in Geneva and the shocking impression he received on the battlefield of Solferino in June 1856 led him to work out suggestions that — after difficult negotiations with representatives of numerous states — led to the conclusion of the "Geneva Convention regarding the care and treatment in wartime of the wounded military personnel." In the 20th century, the activity of the Red Cross has embraced not only the victims of military actions but also peace activities, which includes

aid for the sick, for the handicapped, for old people and children, and for the victims of all types of disasters everywhere in the world.

The special care of the Christian congregation was directed from the beginning to the poor and sick, widows and orphans. Ecclesiastical care for the widows and orphans has been connected to the attitudes of the Old Testament in which Yahweh is the "Father of the fatherless and protector of widows". The widows formed a special group in the congregations and were asked to help with nursing care and other diaconic congregational tasks so long as they did not need help and care themselves.

The care of widows and orphans in its original Christian form played a large role in the Christian mission in all parts of the world, mainly in connection with care in refugee camps and for victims of military disputes and political revolutions such as in Hong Kong, Vietnam, Biafra (which attempted to gain independence from Nigeria, but failed), and Palestine.

The doctrine of a just war had its origin in Christian ethics more than 1,000 years before Hugo Grotius began to clothe it in legal forms. The first Christians were pacifists, more concerned with their religious task than with the secular affairs of the Roman empire. The situation changed rapidly during the fourth century when the Emperor Constantine not only adopted the Christian faith but also became its protector and champion.

St. Augustine gives a concise definition of a just war. Just wars are usually defined as those which avenge injuries, when the nation or city against which warlike action is to be directed has neglected to punish wrongs committed by its own citizens or to restore what has been unjustly taken from it. It is the adversary's wickedness which makes a cause just. Men ought to hate war and desire peace but real peace cannot be achieved in this world because "the mentality of human estate can never grant any realm an absolute security". Real peace will only be possible in the heavenly city. In this world paradoxically peace is achieved by war and war's only purpose is to achieve peace. The Christian is to wage war with moderation, to show mercy to prisoners and the defeated "especially where no disturbance of peace is to be followed". If an earthly state observes Christian teachings, even war will not be waged without kindness.

In Islam too we find the stress on human values and kindness and charity to friend and foe but in Islam we find that these principles have been embodied also in the principles of law based on the Holy Quran and the Sunnah.

In the Holy Quran Allah says "And indeed the difference of your languages and colours. Lo! herein indeed are portents of the mastery of the Creator for men of knowledge". (Surah Rum (30) : 22). Mankind in this world are of different races, colours, and nationalities; race, colour and nationality have been accentuated and exaggerated so that at times race or nation has claimed and sought to have superiority over other races and nations. Mankind has thus been divided into more or less closed compartments of groups and nations and misunderstandings and differences have arisen between them. The Holy Quran however emphasises the fact that despite the differences in colour, race and nationality, mankind is one

common brotherhood and that the peoples of the world should work together for the common good of mankind. Such differences are only convenient labels by which we may know one another — they should not cause division and enmity between us. Thus Allah says in the Holy Quran "O Mankind! we created you from a single pair of a male and a female and made you into nations and tribes, that you may know each other not that you may despise one another." (Surah Hujurat (49) : 13)

Islam emphasises the universal brotherhood of mankind. It teaches that all human beings are descended from the same couple. The Holy Quran says "O Mankind! Be careful of your duty to your Lord who created you from a single being and from it created its spouse and from them twain has spread abroad a multitude of men and women." (Surah An-Nissa (4) : 1)

Islam teaches us too that mankind is one community. The Holy Quran says: "Mankind was one community" (Surah Al-Baqarah (2) : 213). And "Lo! This your community is a single community and I am your Lord and Cherisher; so worship me." (Surah Anbiyaa (21) : 92)

No special honour is accorded to any race or nation. Honour is only due to the one who is the best in the remembrance of Allah and in the performance of his duties to Allah and mankind. In the Hadith the Holy Prophet (s.a.w.) is reported to have said "The whole universe is the family of Allah. So the most beloved in the sight of Allah is he who does good to His Family."

Islam teaches that no nation has any inherent superiority over other nations. It therefore condemns all wars or acts of aggression for the purpose of asserting the supposed superiority of any nation. The Holy Prophet (s.a.w.) is reported to have said "He is not one of us who sides with his tribe in aggression, and he is not one of us who calls others to help him in tyranny and he is not one of us who dies while assisting his tribe in injustice."

Even differences in religion should not create division between us. Islam enjoins toleration towards the believers of other religions. The Holy Quran says "Lo! those who believe in that which is revealed unto thee Muhammad and those who are Jews and Christians and Sabeans — whoever believes in God and the Last Day and does right — surely their reward is with Allah and there shall be no fear come upon them neither shall they grieve." (Surah Al-Baqarah (2) : 62). And again "Lo! those who believe and those who are Jews and Sabeans and Christians — whoever believes in Allah and the Last Day and does right — there shall be no fear come upon them neither shall they grieve". (Surah Al-Maidah (5) : 72). The Muslims are enjoined to say "Say we believe in Allah and that which is revealed unto us and that which was revealed unto Abraham and Ismail and Isaac and Jacob and the Tribes and that which Moses and Jesus received and that which the Prophets received from their Lord. We make no difference between any of them for we submit unto Allah." (Surah Al-Baqarah (2) : 136). The attitude of Muslims towards the people of other faiths is thus defined in the Holy Quran — "Say: I worship not that which you

worship. Nor will you worship that which I worship. And you will not worship that which I worship. Unto you your religion and unto me my religion". (Surah Al-Kafirun (119)). Islam in fact believes in the unity of all religions as they all have a common source in the Almighty Creator. It believes too that Messengers have been sent to all parts of the world and it teaches us to believe in all the Messengers and all the revealed books whether the original revealed books are found or not and whether the history of such messengers are preserved or not. Islam goes further and instructs us not to differentiate between any of such messengers.

Although Islam has sometimes been connected with war and the sword, the norm in Islam is peace. The name given to the religion itself literally means peace and the traditional salutation of a Muslim is "Assalamualaikum" — Peace be upon you. People are warned not to create mischief and disturb peace. The Holy Quran says —

"Do not make mischief on the earth when order had been established therein" (Surah A'raf (7) : 56)

"And remember the benefits you have received from Allah and refrain from evil and mischief on the earth". (Surah A'raf (7) : 74)

Those who break Allah's covenant after it is ratified and who sunder what Allah has ordered to be joined and do mischief on earth:

These cause loss only to themselves. (Surah Al-Baqarah (2) : 191)

The blame is only against those who oppress them with wrongdoing and rebel in the land defying right and justice: For such there will be a grievous penalty". (Surah Shura (42) : 42) And withhold not things justly due to men nor do evil in the land making mischief." (Surah Shu'raa 22 : 183)

Islam places a high value on human life. Slaughtering of the individual is considered to be slaughtering of the whole nation. The Holy Quran says "If anyone slew a person — unless it be for murder or spreading mischief in the land — it would be as if he slew the whole people and if anyone saved a life, it would be as if he saved the life of a whole people. (Surah Al-Maidah (5) : 35)

"Nor take life which Allah had made sacred - except for just cause." (Surah Bani Israil (17) : 33)

The Holy Quran also says "And if they incline to peace, incline thou also to it and trust in Allah." (Surah Anfal (8) : 61)

Unfortunately war is sometimes unavoidable and the Holy Quran therefore has many verses on war. Among them are —

(a) "Fight in the path of Allah against those who fight against you but do not transgress limits. Lo! Allah loves not the transgressors." (Surah Al-Baqarah (2) : 190)

(b) Sanction is given (to fight) to those who are fought against because they have been wronged; and Allah indeed is able to give them victory." (Surah Al-Hajj (22) : 39)

(c) (They are) those who have been expelled from their homes in defence of right — for no cause except that they say "Our Lord is Allah. Did not

Allah check one set of people by means of another, there would surely have been felled down monasteries, churches, synagogues and mosques, in which the name of Allah is commemorated in abundant measure. Allah will certainly aid His cause." (Surah Al-Hajj (2) : 40)

- (d) And why should you not fight in the cause of Allah and of those who being weak are ill-treated (and oppressed). Men, women and children whose cry is "Our Lord rescue us from this town, whose people are oppressors and raise for us from Thee one who will protect and raise for us from Thee one who will help". (Surah An-Nisaa (4) : 75)
- (e) "Thereupon when you meet the unbelievers in fight smite at their necks; thereafter either set them free as a favour or let them ransom (themselves) until war lays down its weapons." (Surah Muhammad (47) : 4)

Lest it be misunderstood, it must be emphasised that Islam emphasises freedom of conscience and belief.

"There is no compulsion in religion. The right direction has become distinct from errors." (Surah Al-Baqarah (2) : 256)

"Say you who reject faith! I worship not that which you worship. Nor will you worship that which I worship. Nor will you worship that which I worship. And I will not worship that which you have been wont to worship. Nor will you worship that which I worship. To you be your religion and to me mine." (Surah al-Kafirun (109))

One significant difference between the rules of international law and the Islamic law relating to war is that while the rules of international law are based on conventions and agreements which have no legal sanction, the rules which are to be found in the Islamic Law are in the nature of law, because they are the injunctions of Allah and His Prophet, which are followed by the Muslims in all circumstances, irrespective of the behaviour of the enemy.

1. *Amelioration of the condition of the wounded and the sick in armed forces in the field.*

"Do not attack a wounded person" said the Prophet (s.a.w.). This means that the wounded soldiers who are not fit to fight nor actually fighting, should not be attacked. "No prisoner should be put to sword" said the Prophet. The Prophet (s.a.w.) has prohibited the killing of anyone who is tied or in captivity. We find that as early as the time of the Prophet women took part in battles as nurses, transporters of the wounded and the dead.

In the Sahih Al-Bukhari (a well known collection of *hadith*) there is a chapter on the treatment of the wounded by the women during the holy battle (52:67) — Ar-Rubayyi binti Mu'awidh narrated: "We were in the company of the Prophet providing the wounded with water and treating them and carrying the killed to Medina from the battle field." Ar-Rabi binti Mu'awidh also narrated: "We used to take part in the holy battles with the Prophet by providing the people with water and serving them and bringing the killed and the wounded back to Medina". Muhamad Ash-Shaibany, a disciple of the great Hanafi Imam, Abu Hanifah allows young women

to volunteer in military expeditions — “A free woman may lawfully go on military expeditions along with near relatives in order to nurse the wounded; but she should not go without the permission of her near relatives, be she of advanced age or young”.

Respect is always to be paid to the dead. Mutilation of enemy corpses is forbidden. Dead bodies of the fallen enemy as well as those of Muslims are to be buried. If the enemy requests the handing over of the body of some dead person on either side it may not be refused. Severing the head of some fallen enemy and sending it to some higher Muslim authorities is regarded as improper and disliked and the first Caliph Abu Bakar issued orders forbidding it.

In the battle of Uhud the disbelievers mutilated the bodies of the Muslims who had fallen on the battle field by cutting off their ears and noses and threading them together to put round their neck as trophies of war. The abdomen of Hamza, the uncle of the Prophet, was ripped open by the Quraysh, his liver was taken out and chewed by Hind, the wife of Abu Sufyan the leader of the Makkan army. The Muslims were naturally enraged by this horrible sight. But the Prophet (s.a.w.) asked his followers not to mete out similar treatment to the dead bodies of the enemies. It is recorded that “the Prophet has prohibited us from mutilating the corpses of the enemy.” (Sunan Abu Daud)

The Holy Quran says —

“And if you do catch them out, catch them out no worse than they catch you out. But if you show patience, that is indeed the best course for those who are patient. And you should be patient for your patience is but from Allah; nor grieve over them; and distress not yourself because of their plots. For Allah is with those who restrain themselves and those who do good. (Surah Nahl (16); 136 — 128)

In the battle of the Trench (5 A.H.) a very renowned and redoubtable warrior of the enemy was killed and his body fell 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 (s.a.w.) replied, “I do not sell dead bodies. You can take away the corpse of your fallen comrade.”

2. *Forbidden acts in warfare*

- (a) Unnecessarily cruel and tortuous ways of killing are forbidden. The Prophet (s.a.w.) is reported to have said, “Fairness is prescribed by Allah in every matter; so if you kill, kill in a fair way.”
- (b) In the Hadith there is a saying of the Prophet (s.a.w.) that “Punishment by fire does not behove anyone except the Master of the Fire i.e. Allah. (Sunan Abu Daud).

Abu Hurairah narrated “The Messenger of Allah sent us on a mission and said “If you find so and so and so and so, burn both of them with fire.” When we were about to depart the Messenger of Allah said “I have

ordered you to burn so and so and so and so and it is none but Allah who punished with fire, so if you find them kill them." (Sahih Al-Bukhari Vol. 4 160)

- (c) It is forbidden to kill non-combatants. Women, minors, servants and slaves who accompany their masters but do not take part in actual fighting, the blind, monks, the very old, those physically incapable of fighting, the insane or delirious are authoritatively included among the non-combatants. The Prophet forbade the killing of women and children, but an exception is recognised in the case of night raids, when it is not possible to distinguish between the combatants and non-combatants. Killing peasants when they do not fight is forbidden. Traders, merchants, contractors and the like are to be spared if they do not take part in actual fighting.

Islam has drawn a clear line of distinction between the combatants and the non-combatants. As far as the non-combatants are concerned such as women, children the old and the infirm, the instructions of the Prophet are as follows —

"Do not kill any old person, any child or any woman". (Sunan Abu Daud)

"Do not kill the monks in monasteries".

"Do not kill the people who are sitting in places of worship." (Ibn Hanbal, Musnad)

It is narrated on the authority of Abdullah that a woman was found killed in one of the battles fought by the Messenger of Allah (Peace be upon him). He disapproved of the killing of women and children (Sahih Muslim, translated by A.H. Siddiqui Vol. 3 p. 946; Sahih Al-Bukhari, translated by M.M. Khan Vol. 4 p. 159).

It is narrated by Ibn Umar that a woman was found killed in one of the battles: so the Messenger of Allah (may peace be upon him) forbade the killing of women and children (Sahih Muslim Ibid; Sahih Al-Bukhari op. cit. p. 160).

- (d) Devastation, destruction of harvest, cutting trees unnecessarily are forbidden. In the Holy Quran Allah has condemned those

"When he holds authority he makes effort in the land to cause mischief in it and destroy crops and cattle." (Surah Al-Baqarah (2) : 205)

In his instructions to Abdur Rahman ibn Auf the Prophet (s.a.w.) is reported to have ordered —

"Do not commit breach of trust nor treachery nor mutilate anybody nor kill any minor or child."

The Caliph Abu Bakar in his instructions to Usamah wrote —

"I enjoin upon you ten commandments. Remember them. Do not embezzle, do not cheat, do not break trust, do not mutilate, do not kill a minor child or

an old man of advanced age or a woman, do not hew down a date palm nor burn it, do not cut down a fruit tree, do not slaughter goat or cow or camel except for food. Maybe you will pass near people who have secluded themselves in convents, leave them and their seclusion."

In his instructions to Yazid bin Abu Sofian he wrote —

"Do not kill any old man or woman or minor or sick persons or monks. Do not devastate any population. Do not cut a tree except for some useful purpose. Do not burn a palm tree or inundate it. Do not commit treachery, do not mutilate. Do not show cowardice and do not cheat".

Umar, the Second Caliph in his instructions ordered —

"Do not show cowardice in an encounter. Do not mutilate when you have power to do so. Do not commit excess when you triumph. Do not kill an old man or a woman or a minor but try to avoid them at the time of the encounter of the two armies and at the time of heat of victory and at the time of expected attacks".

- (e) Adultery and fornication even with captive women were forbidden. As regards a free enemy woman, the violator is to be stoned to death or whipped according to whether he is married or unmarried. If, however she is captive he is to receive discretionary punishment (ta'azir) and to be fined.

3. *Treatment of prisoners of war*

- (a) The Holy Quran says —

"Therefore when you meet those who disbelieve in fight, smite at their necks; at length when you have thoroughly subdued them, then bind a bond firmly on them; thereafter is the time for either generosity or ransom until the war lays down its burdens". (Surah Muhammad (47) : 4)

- (b) According to Muslim law, a prisoner qua prisoner cannot be killed. This does not preclude the trial and punishment of prisoners for crimes beyond the rights of belligerency. According to Abu Yusof, a prisoner might be killed only in the interest of Islam, although he records many opinions of high authority that their killing is disliked (makruh). According to Sarakhsiy, even the Commander in Chief cannot order a prisoner to be killed; only the head of state can decide to put to death some particular prisoner. In short capital punishment for prisoners of war is permissible only in extreme cases of necessity and in the higher interests of the state.
- c) There were liberal provisions regarding treatment during captivity. As regards the prisoners at the Battle of Badr the Prophet ordered "Take heed of the recommendation to treat the prisoners fairly". We are told that as a result many Muslim soldiers contented themselves with dates and fed the prisoners in their charge with bread. Prisoners must be fed and well treated until a decision is reached regarding them.

Prisoners are to be protected from heat and cold. If they have no clothes, these must be provided. We read in the Sahih Al-Bukhari —

“Jabir bin Abdullah narrated that when it was the day of the battle of Badr, prisoners were brought including Al-Abbas who was undressed. The Prophet looked for a shirt for him. It was found that the shirt of Abdullah ibn Ubai would do, so the Prophet let him wear it”. (52:142)

If the prisoners were in trouble or difficulty, this is to be resolved as far as possible. A prisoner has the right to draw up wills for his property at home. Such wills would be communicated to the enemy authorities through a proper channel. Among prisoners a mother is not to be separated from her child nor other near relatives from each other. The position and dignity of prisoners are to be respected according to individual cases. There is no evidence in early Muslim history of exacting labour from prisoners. If they tried to escape or otherwise violate discipline they might be punished. In the Holy Quran the righteous are described as those who — “Feed for the love of Allah, the indigent, the orphan and the captive, saying “We feed you for the sake of Allah; no reward do we seek you nor thanks. (Surah Ad-Dahr (76) : 8)

- (d) There is no verse in the Holy Quran directly permitting enslavement although there is indirect mention of it. In practice, there were a few instances where captives were enslaved. Although Islam has not abolished slavery, it has done much to minimise it. The Prophet (s.a.w.) decreed that no Arabs could be enslaved. The Caliph Umar issued orders that peasants, artisans and professionals of belligerent countries should not be enslaved. The Holy Quran exhorted liberation of slaves and provided that the income of the Muslim States should partly be allotted for the ransom of slaves.

“Alms (zakat) are for the poor and the needy and those employed to administer the funds; for those whose hearts have been reconciled to truth; for those in bondage and in debt; the way of God; and for the wayfarer”. (Surah Tauba (9) : 60) It must be remembered that “slave” in Islam does not convey the same idea as in other civilizations. For a slave of a Muslim has a right to equality with his master, in food, clothing and dwelling.

- (e) The Holy Quran has recommended the gratuitous release or the release of prisoners of war on ransom when hostilities cease.

“Thereafter free them gratuitously or on ransom”. (Surah Muhammad (47):

4) We read that the Prophet (s.a.w.) used to liberate prisoners with various kinds of ransom and compensation. Some were required to teach Muslim boys reading and writing; sometimes money in gold or silver were demanded; sometimes other goods for example spears were accepted. There are also many instances where prisoners were released gratuitously.

4. Medical Services

Medical service in war is regarded as purely humanitarian. Doctors and nurses are never harmed if they do not resist; they might be captured. As early a jurist as Ash-Shaibany (d. 189AH) mentions neutral and even non-Muslim ambulance services and medical help for Muslims. There are records of hospitals, nurses and arrangement of the transport of the wounded and the dead in the battles of Uhud, Khandaq and others. The armies of the Caliph Umar too were provided with medical men.

5. Civil Wars

(a) The Holy Quran says —

“And if two parties of Believers fall to fighting, then make peace between them. And if one party of them does wrong to the other, fight you that which does wrong till it returns unto the Ordinance of Allah; then if it returns make peace between them justly and act equitably. Lo! Allah loves the equitable. The believers are naught else then brothers. Therefore make peace between your brothers and observe your duty to Allah that you may obtain mercy. (Surah Al-Hujurat (49) : 9 10)

- (b) According to Al-Mawardi the punishment of rebels in Muslim law is not capital — they may be killed only on the battlefield at the time of combat. Generally this is true but As-Sarakshi has said that on certain occasions, as for example when the rebellion is not yet completely subdued, the rebel prisoners may be killed, if they remain obstinate and their repentance is not established. The aim of the fight with rebels is to prevent them from disturbing peace and order, and not to kill them and exterminate them.
- (c) Rights of full belligerency are conceded by Muslim law to rebels. The judgement of the courts in a rebel state will be regarded as lawful and valid and will not be upset even if the country is subdued, unless it is shown that the decision is contrary to Muslim law. Similarly if the rebels collect revenue or other taxes, the people will be released from their obligation and upon reconquest the Muslim State may not exact the same taxes again.
- (d) Rebels have special privileges as compared with foreign enemies. No tribute can be taken from rebels, if for some reason the Muslim state is willing to make peace with them. Save in defence weapons unnecessarily destructive are not to be used against rebels.
- (e) Ali, the fourth Caliph, said regarding a rebel force —

“When you defeat them, do not kill their wounded, do not behead the prisoners; nor pursue those who return and retreat, do not enslave their women, do not mutilate their dead, do not uncover what is to remain covered, do not approach their property except what you find in the camp of weapons, beast, male or female slaves; and the rest is to be inherited by their heirs according to the Writ of Allah.”

Their dead are to be buried. Their prisoners are not generally to be beheaded and if they convincingly promise to behave in future like loyal and law abiding subjects they ought to be immediately released. No ransom may be demanded for the release of prisoners. Rebel prisoners, Muslims or non-Muslims may not be enslaved.

6. Quarter

The Holy Quran says —

And if any one of the associators (non-Muslims) seek your protection, then protect him so that he may hear the word of Allah and afterwards convey him to his place of safety." (Surah tauba (9) : 6)

This is the justification for quarter, that is, the practice of refraining from opposing the belligerents through killing or capturing them.

Quarter might be granted to enemy persons when they solicit it individually or in a group. Quarter might also be given to enemy persons without soliciting it, through a general proclamation. So at the time of the conquest of Mecca the Prophet (S.A.W.) made it known that all those persons will be safe who entered the courtyard of the Kaaba or the house of their chief, Abu Sufyan, or who shut up the door of their houses or laid down their arms. According to a hadith of the Prophet (S.A.W.), even the lowest of the Muslims can give quarter which will be binding on the Muslim state. The right is therefore possessed not only by the combatants, but even by others incapable of fight, by the sick and the blind, by slaves and by women.

7. Prohibition of breach of treaties

Islam has strictly prohibited treachery. One of the instructions that the Prophet (s.a.w.) used to give to Muslim warriors when sending them to the battle front was "Do not be guilty of breach of faith." There is a famous incident in the peace treaty of Hudaibiya when, after the settlement of the terms of the treaty, Abu Jandal, the son of the emissary of the unbelievers who had negotiated the treaty with the Muslims, came bound and blood-stained to the Muslim camp 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. You should go back with your father. Allah will provide you with some other opportunity to escape this persecution."

The entire Muslim army was deeply touched and grieved at the plight of Abu Jandal and many of them were moved to tears. But when the Prophet declared "we cannot break the agreement," not a single person came forward to help the unfortunate prisoner; so the unbelievers forcibly dragged him back to Mecca.

8. 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." (Surah

Anfal (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 had already started the aggression. Islam enjoins fairness and justice on Muslims in all dealings even with their enemies. Allah says in the Holy Quran —

“O you who believe! Stand out firmly for Allah as witnesses to fair dealing and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety. And fear Allah. For Allah is well-acquainted with all that you do”. (Surah Al-Maida 59 : 9)

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