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Book Review: Islamic Law and International Humanitarian Law

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INTRODUCTION

“Everything is Fair in Love and War” if this infamous phrase we grew up listening to was indeed true, then reckless mass killing would have been justified in the name of war. Much of the history consists of wars resulting in mass killings and destruction on both sides. Reciprocal acts of destruction do no good as the adage goes ‘a tooth for tooth and an eye for an eye, makes the whole world go blind’. Therefore, in the modern era, International Humanitarian Law has emerged as a savior minimizing the damage on both sides. International Humanitarian Law is a field of law that governs the rules of wars hence is also known as the ‘Law of Wars’. Laws are hugely derived from societal norms, history, traditions, and religion. Law of Wars in Islam is one example of how religious beliefs around the world have some standards for wars. The book ‘Islamic Law and International Humanitarian Law’, a joint publication by the International Committee of Red Cross and the University of Sarajevo located in Bosnia, examines the extent of similarities and differences between the two.

CONTENT SUMMARY

The book extensively examines the sources of Islamic Law of Wars which includes the Holy Quran, The Hadeeth (account of Prophet Mohammad's actions and saying), and the precedents laid by the first four Caliphs following the death of the Prophet. It also explains the basic principles governing the Islamic Law of Wars such as Protection of Civilians and Non-Combatants; protection of property ensuring least destruction to environment and people; fair treatment of prisoners of wars; burial of dead bodies as a mark of respect for human dignity; provision of refuge for those seeking protection under Muslims. While exploring the principles of Islamic Law of Wars it also highlights the similarities, dissimilarities, and interaction between the two as explained in further sections-

SIMILARITIES

It also delves into the similarities between Islamic Law and International Humanitarian Law. For instance, Islamic Law of War protects civilians and non-combatants which is in line with Additional Protocols I of Geneva Conventions. Both the laws also emphasise the attacks to be restricted to military objectives after analysing the relation between the necessity and military advantage to be achieved. Additionally, Islamic Law guarantees humane treatment of Prisoner of Wars similar to that stipulated in Geneva Conventions III. It is noteworthy that while analysing the similarities, the authors have not neglected the characteristics and factors behind Islamic Law which makes it unique. One such factor is that the primary obligation to follow Islamic Law during the war for a Muslim comes from the fear and love of God rather than a legal obligation. Thus, under the Islamic Law of Wars, a Muslim is obligated to follow these laws even when the enemy has rescinded from following International Humanitarian Law.

Another aspect of Islamic Law has been highlighted which explains the reason for conflicting positions among Muslims. The Islamic Law of Wars was not codified which paved the way for different interpretations by different Muslim Jurists. For example, the treatment of Prisoners of War. Hanafi Jurists propounded that the head of the state has three options when it comes to the treatment of Prisoners of war - execution, enslavement, or release with the condition of paying tax and staying within the same territory. On the other hand, another group of jurists

restricts the choices to unconditional release or release with the ransom, thus discarding the option of execution of prisoners. This factor poses a challenge to the uniform application of Islamic Law in conformity with International Humanitarian Law.

DISSIMILARITIES BETWEEN ISLAMIC LAW AND INTERNATIONAL HUMANITARIAN LAW

It can be noted that vivid descriptions of dissimilarities between International Humanitarian Law and Islamic Law are less compared to similarities in the book. One of the few distinctions pertains to the scope of the two concerning 'Jus in Bello' (laws governing law) and 'Jus ad Bellum' (laws examining the need for engaging in a war or its justification). International Humanitarian Law is concerned with laws of war or Jus in Bello and does not expand to the justification or criteria of engaging in war. A separate domain is known as 'Public International Law' deals with Jus Ad Bellum according to which wars should be resorted to in cases of self-defense. On the other hand, the Islamic Law of Wars does not make a distinction between the two. However, it has been noted that Muslim jurists hitherto have extensively researched on Jus in Bello neglecting Jus Ad Bellum. The lack of dissimilarity mainly comes from the fact that Islamic Law of Wars and International Humanitarian Law is similar to a great extent.

INTERACTION BETWEEN ISLAMIC LAW AND INTERNATIONAL HUMANITARIAN LAW

The interaction between Islamic Law and International Humanitarian Law through international treaties is also discussed in the book. Pacta Sunt Servanda is a Latin maxim that lays the basic principle of contracts in Law. It means that the parties are bound by the contract and have to fulfill the obligations. It is a recognized principle in Islamic Law as well. Thus, if a Muslim Country has signed an international treaty operating law of wars such as Geneva Conventions then it has to fulfill the agreed obligations. Reportedly one Hadith of the Prophet instructs Muslims to fulfill the obligations they have agreed to unless it is forbidden by Islamic rules itself.

ASSESSMENT

While enumerating similarities between the two laws, mutilation of dead bodies has been mentioned as a prohibited practice in both laws. One stark distinction that is not explored in the book has to be the mutilation of dead bodies vis-a-vis laws on organ transplants. Islamic law just like International Humanitarian Law prohibits the mutilation of dead bodies. However, unlike International Humanitarian Law, under Islamic Law, an organ transplant of dead bodies also amounts to mutilation. Further, as aforementioned, the principle of *pacta sunt servanda* obligates a Muslim country to fulfill a treaty but not at the cost of violation of Islamic principles. This creates room for conflict between the two.

For instance, a Muslim country is a signatory to an international treaty that mandates the return of dead bodies to the enemy country. It is identified that the dead body belonged to a person who consented to organ donation in his lifetime. Under the Islamic Law of Wars, would that body be returned despite prior knowledge of Organ transplant and donation amounting to mutilation? Would the obligation under the International treaty prevail over Islamic norms?

CONTEMPORARY RELEVANCE

In the contemporary era where Islamic concepts and principles are molded to justify ulterior motives, this book serves as an insight into their correct explanation. For instance, 'Jihad' a term that is dragged into politics and used to justify wars in the name of Islam has been portrayed as a fierce war for the sake of religion. However, upon reading the book, one can find that Jihad has a wider implication and is not restricted to merely wars against Non-Muslims. It can be any form of struggle be it against one's ego, corruption in society, injustice, etc. Armed conflict is only one form of Jihad, which nevertheless under Islamic Law cannot be commenced unless there is a legitimate necessity.

CONCLUSION

This book is a good read for a law student, humanitarian law enthusiast, Islamic studies enthusiast, and anyone who has a curiosity for the interrelation between the two. In a world where the majority of war-affected areas are Muslim countries, it is a dialogue and an attempt

to spread awareness and enhance research related to this topic. Not only the similarities have been enumerated but also the peculiar factors affecting the Islamic Law of Wars have been discussed. Dissimilarities are comparatively less because of the large extent of similarity between Islamic Law of Wars and International Humanitarian Law. This can also be attributed to the lack of existing literature which leaves scope for learners, scholars, and readers to explore.