

War and Peace in the Law of Islam

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Date of Submission: 04-01-2021

Date of acceptance: 19-01-2021

Shariah has elaborated the rules on its laws which generally follow Islam's historical development of conquests and consolidations, followed by disintegration and foreign encroachment. Islamic Law is based primarily upon the two fundamental sources – the Quran and the Sunnah. Its rules have been developed in accordance with the model example set by Prophet Muhammad ﷺ in his dealings with non-Muslims. The conquests left the Muslims slightly bewildered at their unexpected success. It forced them to deal quickly with several issues related to the rules of war and peace and the treatment to the conquered people. The book under review is masterpiece on the said title of *war and peace in the Law of Islam* by Majid Khadduri to delineate upon such laws and an effort to simplify the concepts.

The book "*War and Peace in the Law of Islam*" is written by Majid Khadduri, a prominent scholar and author. He (1909-2007) was a professor of Middle East studies at the School of Advanced International Studies of The Johns Hopkins University and Director of Research and Education at the Middle East Institute in Washington, D.C. The first edition of this book, published in 1941 in England and the second edition of the book, published in Baltimore, The Johns Hopkins Press, 1955 and also reprinted in 2006-2010 by The Law book Exchange, Ltd. The aim of this book is to reconstruct the classical legal theory of Islam, as well as the principles and the rules governing Islam's relations with non-Muslim countries. Since any discussion of the classical theory and practice would merely indicate the radical differences that existed between Muslim and modern law of nations. The book seeks not only to formulate from the diverse original documents a consistent legal theory and practice of Islam's relations with other nations throughout the centuries but also to discuss the efforts in recent times aimed at adopting Islam to the principles and purposes of the modern community of the nations.

The book is divided into three sections. The first section of the books is based on the *fundamental concept of Muslim law*. This section of the book deals with the concept and meaning of society and state under Muslim law, juridical concept of the state etc. in this section the author discussed about the nature and sources of Islamic law and the Muslim law of nations. The main motive of the author is to highlight the main sources of Islamic law and Muslim law of nations. Majid Khadduri argues that in the Islamic legal theory only Allah is ultimate source of authority, having knowledge of perfect law, called Divine law, preceded both society and state for the very purpose of enforcing the law (p.23). the author argues in another place that the objectives of this Divine law is to provide the guidance not only in establishing ordered society, but also in distinguishing between good and evil. It is a system of obligations which helps to show the right path for believers in order to achieve salvation (p.25).

During the time of Prophet Muhammad ﷺ, special sources i.e. the Quran and Sunnah were used to solve the problems when they faced within the territory of Arab. When the Muslims conquered new states they faced different problems there, and found no direct solutions within the Quran and Sunnah. So the Prophet Muhammad gave them the directions to follow Ijtihad. There is a Hadith of Prophet Muhammad ﷺ when he send Mu'adh ibn Jabal to Yemen and gave him instructions for properly applying Islamic law if there is no solution in the Quran and Sunnah.

Prophet Said: How will you judge? He said "I will judge according to what is in the Book of Allah."
The Prophet ﷺ said: what if it is not in the Book of Allah? He said, "Then with the tradition (sunnah) of the Messenger of Allah."
The Prophet ﷺ said: what if it is not in the tradition of the Messenger of Allah? He said, "Then I will strive to form an opinion (ijtihad) (sunan At- Tirmidhi 1327)

This hadith demonstrates jurists of the contemporary Islamic world to proper procedure for applying Islamic law as Umar (R.A) gave instructions to Abu Musa al- Ashari (Qadi of Basra) to consult sources in legal decisions, namely the Quran, Sunna and Ijtihad (p.28).The author at one more place mentions, when Imam Abu Hanifa (699-768A.D) in Iraq, distinguished himself as the chief advocate of analogy (*Qiyas*) as a source of law, whenever the Quranic verses and the Hadith was lacking to produce direct instructions, he uses it as the third source of Islamic law. He also was in favor of *Istihsan* (p.29). Similarly, Imam Malik ibn Anas (A.D 718-96) in

Madina had the reputation of making use of traditions of the Prophet ﷺ and wrote a great work *al-Muwatta* on Islamic law, and favored the *Ijma* (scholarly consensus) (p.31). The author argues that firstly Muslim scholars should judge according to the Quran and Sunnah of Prophet ﷺ and consensus of the Sahaba. If a clear answer is not found, then Muslims should apply rational principles such as analogy (*Qiyas*), consensus (*Ijma*) equity (*Istihsan*).

The next section of the book is based on the *Law of war and jihad*. In this section, the author briefly describes the meaning of jihad in Islam. The author highlights the concept and meaning of jihad in Shi'i and Khariji School of thought. He argues that in Shi'i legal theory, not only would the failure of a non-Muslim to believe in Allah justify waging a jihad, but also the failure of a Muslim to obey the imam would make him liable for punishment by a jihad (p.66). He argues that jihad does not necessary mean war or fighting, since exertion in Allah's path may be achieved by peaceful as well as violent means (p.56). Allah says, "He who exerts himself (jahada), exerts only for his soul" (29:5). The author also discussed about the jihad against different types of group of people under Islamic law. Quran and the traditions of the Prophet ﷺ ordered the believers to fight against such type of groups who are against the laws of Shariah. Such types of group of people are polytheists, Apostasy etc. Furthermore, the author states the methods of Muslim military during Prophetic period and the caliphs etc. The author highlights the objectives of the land warfare in Muslim legal theory and views of different jurist on unnecessary destructions under Islamic law. He also highlights the views of different classical jurist on the protections of non-combatants such as, women, children, monks and hermits, the aged, blind, and insane etc who are not the part of any war directly or indirectly (p.104). The crux of this section is to protection of the civilians during conflicts, who suffer lot of pain during conflicts between the state and not state actors. The author argues that under Islamic law, objective of the war is neither the achievement of victory nor the acquisition of the enemy's property; it is rather the fulfillment of a duty by universalizing the Islamic faith. Islam forbids the shedding of blood or destruction of property unnecessary for the achievement of their objectives. The author mentions different juristic opinion on the protection of civilian lives and the property during the war, and these jurists forbids the destruction of properties like religious places, hospitals etc and shedding of blood unnecessary. They strongly condemn the killing of any person who is not directly involved in the war and are not in the support of any other war where the humiliations of the dead bodied happens. They said that Islam not allows us to do such type of act with the dead bodies and Allah forbids us form such type of inhumane behavior. The author quotes an incident on this issue that if a person, whether he/she is old and involved in the war directly or indirectly should be killed under Islamic law. A hadith is reported on the authority of Ibn Hisham that in the presence of Prophet Muhammad ﷺ, in the battle of Hunayn, Muslims killed an old man who was hundred years old, because of his involvement in that war indirectly.(p.104).

The third section of the book is based on the *Law of peace*. In this section the author gives an introductory note on the law of peace in Islam, he highlight the status of believers, unbelievers, apostates under Shariah. The author discusses about the rights of foreigners (*Harbis and Musta'mins*) under Islamic law. In a Muslim territory a Muslim can enjoy full citizenship rights and the foreigners (*Harbi's*) can enjoy some rights on the types of relationship they have made with the Muslims (p.162). The author highlights the rights and obligations of *Musta'min* in Muslim territory. Shariah allows him to enter unto business transactions within the limitations of the Islamic law, while he is enjoying the right of safe conduct (p.168). The author argues that if a *Musta'min* violates certain rules of conduct or committed a crime, his pledge remained valid, but he was liable to be punished. Imam Shafi'i's view on this issue is that the *Musta'min* was not punished but warned that his pledge might be terminated (167).

This book is an indispensable reference for those who want to understand the immutable doctrine governing the relationship between Muslim and Non-Muslim community. Professor Khadduri provides the reader a clear, concise analysis in eminently readable language that is devoid of dissimulation. His discussion is legal, historical and diplomatic.