



AN ANALYSIS OF THE DOCTRINE OF JIHAD IN ISLAMIC JURISPRUDENCE

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ABSTRACT:

There is a huge difference between Jihad, Holy War and terrorism but because of lack of in-depth knowledge of the Islamic laws, many married the three concepts together. The event of Sept. 11, 2001 and the recent attacks by Isil has brought so many contentious issues about the laws of Islam especially laws of war. This essay will analyse between the concept of jihad, holy war and that of terrorism.

Keywords: Jihad, Terrorism, Quran, Islam, Law

INTRODUCTION

Though war is permitted in Islam, it has its laid down rules and procedures as enshrined in the primary sources of Islamic law that is the Holy Quran¹ which Muslims believed consists of revelations made by God to the prophet Muhammad over a period of 23 years. It consists of 114 chapter and 6666 verses consisting of different length and diverse subject matter, about 70 of which addresses the conduct of hostilities.

The Sunna or traditions of the Holy prophet Muhammad is the second primary sources of Islamic law. It consists of the prophet Muhammad saying, action and silent approval. The Sunna interprets most of the Quran provision. The activities of al-Qaeda, Isis and Boko Haram have more in common with the pre-Islamic practices than with Islam.

Knowledge of Islamic law is of paramount importance in order to understand the concept of Jihad. Acquiring such knowledge is not difficult but the interpretation of the different opinion more especially within the jurists is more often difficult. Interpretation of the doctrine of Islamic jurisprudence is rather problematic in the sense that it is subject to different interpretation by the various school of thoughts². What might be legal to

one might be different to the other school depending on each other's understanding. This is why it is difficult to have consensus in Islamic jurisprudence. There are issues in which all the jurist agreed upon but again there are some which had different interpretation. Jihad happens to fall under such issue that is open to many interpretations. Depending on whose consensus one agrees to, the concept of Jihad in Islamic jurisprudence is wide and opens to different interpretation.

This essay will analyse the various interpretation of the concept of jihad in Islamic jurisprudence enshrined in the sources of Islamic law, and jihad as the use of force and the law of War. The event of September 11 has drawn wide condemnation of Islamic law some seeing it as the source that gave right to Muslims to engage in terrorism. The Orientalist views of Islamic law tend to be dominant in the West that portrays the system as violent, intolerant, barbaric and backward.

Since September 11, Jihad is portrays by the media as a highly complex phenomenon. John Strawson argued that the '*media became an important forum through which contested images of Islam were circulated, which fragmented the homogenous Orientalist framework and offered new points of departure for the exploration of even notoriously*

¹ The First primary sources of Islamic Law.

² There are four schools of thoughts in Islamic Jurisprudence which consist of the Hanafi, Maliki,

Hambali and Shafi'e school of Islamic Jurisprudence



difficult areas of Islamic jurisprudence such as Jihad.³

Jihad is criticized and given a bad name sometimes because of the activities of some Muslims (extremist) who not only hate the West but sees even any Muslim that did not agree with their principle as followers of the West, hence infidel. Arriving at such conclusion is not unconnected to the difficulty engulfed whilst interpreting the Islamic law.

The same goes in the West where some, especially the Orientalist views Jihad as killing innocent people which are not acceptable in a civilized society by whatever name it is called. An author W. Watt Montgomery gives an insight as to how the orientalist⁴ views Islam based on their understanding and interpretation;

'For many centuries most Europeans believed that Islam was a religion of violence which spread by the sword. This was part of the distorted image of Islam which was the negative identity of Western Europe or Western Christendom- a picture of what it considered itself not to be.⁵ Montgomery arrived at such conclusion based on his own understanding and interpretation of Islamic law.

Islamic law have contributed immensely to the military doctrine of war and the laws of war, it has brought rules and procedure in the event of war which today can be found in the Humanitarian laws and the Geneva Conventions. This doctrine called As-siyar forms the back bone of the doctrine of the Islamic laws of war.

Most of the time there is no single way to interpret an issue in Islamic jurisprudence; there are so many ways because of its vast nature. Depending on how one sees it, jihad can mean different things to different people.

Some interpret Jihad as a just, defensive and exceptional form of warfare geared toward the

³ John Strawson Holy War in the Media: Images of Jihad in Frankie Y Bailey; Michelle Brown and Steven M Chermak (ed), Media representations of September 11th

⁴ Bernard Lewis, The Political Language of Islam (Chicago: The University of Chicago Press, 1988), 73

⁵ W. Montgomery Watt, 'The Significance of the Theory of Jihad,' (Gottingen: Vandenhoeck and Ruprecht, 1976), 390.

maintenance of peace and the protection of human rights of all people irrespective of their sex, language, race or religious belief. The Islamic law of armed conflict puts peace as the general rule guiding its conduct and War as the exception.

This view is not shared by some especially al-Qaeda and Isis who sees Jihad as a religious duty aimed at fighting anyone who do not follow their beliefs. Some view jihad as sanctioning warfare whenever the security of Muslims is threatened. While some people interpret jihad as a power forcing non Muslims to embrace Islam and to expand the boundaries of the Islamic state, Sir Thomas Arnold argued that the expansion of the Islamic religion came into being through peaceful methods particularly preaching.⁶ To some jihad means Muslims had a sacred duty to kill anyone that is not a Muslim should jihad break out.⁷ This view is shared by both Muslims and non-Muslims.

Hilmi Zawati is of the view that whatever the case jihad in the form of armed struggle, must be just in its cause, defensive in its initiative, decent in its conduct and peaceful in its conclusion⁸

David Cook in his book 'Understanding Jihad'⁹ argued that jihad aims at domination and killing anyone that rejects Islam. In his words;

'One of the goals of jihad was to conquer and dominate non-Muslims' this is of the fact that in the early days of Islam, many wars were fought by Muslims before the religion was established. He went further to explain that;

'Because of the miracle of the conquests, jihad emerged as one of the core elements of Islam. Without the conquests, the religion would not have had the opportunity to spread in the way that it did, nor would it have been the attractant that it was...

⁶ Thomas W. Arnold, The Preaching of Islam: A History of the Propagation of the Muslim Faith (Lahore, Pakistan: Muhammad Ashraf Publications, 1961), 115-119.

⁷ Farooq Hassan, The Concept of State and Law in Islam (New-York: University Press of America, 1981), 202.

⁸ Hilmi M. Zawati, Is Jihad a Just War? War, Peace, and Human Rights Under Islamic and Public International Law (The Edwin Mellen Press Lewiston, 2001)

⁹ David Cook. Understanding Jihad: University of California Press, (2005)



*Islam was not in fact 'spread by the sword' conversion was not forced on the occupants of conquered territories-but the conquests created the necessary preconditions for the spread of Islam... exception of East Africa, southeast Asia, and to some extent central Asia. Islam has become the majority faith only in territories that were conquered by force.'*¹⁰

The right to life is one of the basic supreme rights enshrined in Islamic international law as far back as the 8th century known as the Siyar.

Gamal Badr, a scholar in Islamic law is of the view that definition of Siyar should be in consonant with historic framework of Islam. Badr consider Siyar as not forming part of the principle of Islam but;

...is the product of a continuing process of juridical speculation by authoritative jurists over the ages.

The Islamic law of nations is part of the corpus of Islamic law just as the original jus gentium was a branch of municipal Roman law. Islamic law is a religious law only in the sense that its basic ethical grounds and some of its general principles are to be found in the Quran and the pronouncements of the Prophet Muhammad. Beyond that, the corpus of Islamic law as it developed over the ages is 'manmade' in the sense that it resulted from the efforts of the jurists of the various schools of law.

If civil law can be described as a legislator's law as to its source and common law as a judge's law, then Islamic law is a jurist's law. There is very little that is rigid and immutable in Islamic law.¹¹ This view is shared by farooq Hassan who argued that'

Though the basis of every norm of Islamic law is by theory derived directly or indirectly from God's wishes for His people, in arriving at what a particular norm is for a given society, the mind of the jurist is patently visible.

Therefore, the mechanics of Islamic jurisprudence, functionally speaking, are similar to the contemporary working of the law of a country possessing a common law system or a civil system of law. The character of the rules of Islamic law is therefore not spiritual but clearly secular, in the sense that such rules are made for the utilitarian

¹⁰ Ibid

¹¹ G.M. Badr, 'A Survey of Islamic International Law', (1982) 76 Proceedings of the American Society of International Law 56

purposes of a society by jurists through the use of the same techniques as employed in other legal systems; however, there is a priori, a fundamental assumption that the rules so made are ultimately based on the Quran or the Sunna. The human element in Islamic law is, therefore, as pronounced as it is in any other major legal system of the world.¹²

Majid Khadduri argued that Islamic international law (Siyar) is an integral part of the Islamic law rather than a separate body of law binding to all Muslims. He (Khadduri) observed as follows;

*'The siyar if taken to mean the Islamic law of nations, is but a chapter in Islamic corpus jurist, binding upon all who believed in Islam as well as upon those who sought to protect their interests in accordance with Islamic justice.'*¹³

In fact, Islamic international law is proving to be in conformity with modern international conventions of humanitarian laws codified in the Geneva Conventions. An example of such conformity can be found in both the Quran and the Sunna of the holy prophet (SAW). The Quran provides;

*If you kill one soul is like you killed the whole nation and whoever spares a life he has spared the whole world'*¹⁴

Based on the above provision, it can be interpreted on one hand to mean anyone that kills another will be presume to have killed the whole nation, while to others it can mean only when it's done 'without any moral justification'.

In a Hadith, the Prophet Muhammad (SAW) is reported to have given warriors instruction before a battle as follows;

'Do not kill children and women, do not destroy churches or any religious places that the name of God is called, do not poison water supply, treats the prisoners of war with kindness so that Allah will treat you with kindness.'

¹² Farooq Hassan, the Concept of State and Law in Islam (New-York: University Press of America, 1981),

¹³ Majid Khadduri, The Islamic Law of Nations: Shaybani's Siyar (Baltimore, Maryland: The John Hopkins University Press, 1966).

¹⁴ Quran5:32



Jihad is categorised in Islam into 2, the Major jihad and the Minor jihad. War and any form of armed activity in Islam falls within the second category with clear laid down rules to be adhered to which is also subject to many arguments depending on the interpretations.

WHAT IS JIHAD?

Majid Khadduri is of the view that Jihad with its assumed position is supposed to be "a free minded field of thought" rather, "Jihad" become the tool of undermining Islam in the hands of few individual, (the likes of al-Qaeda and the Isis)¹⁵ who are out to satisfy their personal interest which is contrary to Islamic thought which called Jihad been a war undertaken for just cause and for defence of Islam.

Jihad is derived 'from Arabic word al-Jahd meaning a Struggle or striving, and the word Jahada means he has struggled or exerted himself. Jihad does not necessarily mean resorting to the use of sword and the shedding of blood as is misunderstood by some. The word Jihad, therefore, is so comprehensive that it includes striving and undergoing hardship and forbearance in great difficulties, while standing firm against one's enemies. The actual word for War in Arabic is Harb and is also used in the holy Quran.

In the Quran, therefore, the word jihad as Warfare is used in respect of waging it for the defence against any aggression or taking an offence in unavoidable circumstances when the onslaught of the enemy is imminent.

Majid Khadduri¹⁶ is of the view that jihad in its broad sense did not necessarily call for violence or fighting, even though a state of war existed between Islamic and non-Islamic territories, since Islam might achieve its ultimate goal by peaceful as well as by violent means. Majid Khadduri defines Jihad in its technical language as;

'An exertion of one's own power to fulfil a prescribed duty, and the believers recompense, in addition to worldly material rewards, would be the achievement of salvation, for the fulfilment of such a duty means the reward of paradise'

¹⁵ Emphasized added by the writer

¹⁶ Majid Khadduri. The Islamic Law of Nations

'Shaybanis Siyar. (Johns Hopkins University Press 1966)

The word Jihad is derived from Jahadun meaning exertion or striving. Technically it means exerting of one's power in repelling enemy to the extent of one's ability whether by word or by deed. It also means a war undertaken for a just cause and for defence of Islam.

The meaning of jihad stated changing when Quran was been revealed in piece-meal during the life time of the prophet Muhammad (SAW). The then non-Muslims of Mecca confronted the prophet while He was struggling to establish an Islamic state. It was a time when the Muslims were persecuted in Mecca in the year (613-622 CE) which prompted the prophet and the believers to migrate to Medina in (622 CE).

Thus, jihad connotes the perseverance and steadfast spiritual struggle of the Muslim in upholding the newly acquired faith (Islam). One of the primary sources of Islamic law Quran revealed to the holy prophet (SAW) between 610 to 632 CE in both Mecca and Medina contained reference to jihad calling on the Muslims followers to resist the persecution and if the need arise fought the enemy in order to practice their new faith. This shows that jihad is of 2 kind i.e. jihad to resist persecution and jihad of warfare.

The prophet Muhammad called the jihad of perseverance as the greater jihad (Jihad-Al-Akbar) whiles the jihad of warfare as the lesser jihad (Jihad-Al-Asgar). Today people are more concerned with the lesser jihad (Warfare) than the greater jihad while the lesser jihad involved actual combat. The prophet is reported to have said;

'The best form of jihad is to speak the truth in the face of an oppressive ruler'

In the lifetime of the prophet Muhammad (SAW) the verses of the Quran mentioning jihad about 24 mostly urges the Muslims to take up the spiritual and non-violent aspect of jihad (greater jihad). This includes urging Muslims to resist pain and persecution, to migrate to Medina, to peacefully propagate the Islamic faith and principle with their strength and or financial capability. Among the verses of jihad only few mentioned jihad as armed resistance.

Quran is revealed to give the Muslims solution to problem and or instructions, hence the chapter revealed in the early days of Islam mostly is connected to the establishing the new faith. Though resort to use of force as part of jihad is always contemplated looking at the verses of the Holy



Quran, it can be deduce that the Medina chapters has different approach to that of Mecca for the fact that in Mecca Islam had gained ground compared to Medina when Islam is in an infant state.

The Quran said;

... Allah has preferred those who strive hard and fight, above those who sit (at home) by a huge reward¹⁷

From the above verse it will be understood that permission is given to fight. This raises the question of;

1. Whether this permission is a permanent one from the time of the prophet to the end of the world.
2. Whether it is only at the time when Islam is in an infant state hence fighting is necessary in order to establish the faith and in defence to persecution then.
3. Fight except when there is a truce or treaty or in self-defence.
4. Whether war is to be waged against the non-Muslims solely because of their disbelief.

Those that believed with the first one (fighting is permanent) relied on the following Quran verse as authority.¹⁸

In sura-Al-Baqara, it is revealed;

And fight in the Way of Allah those who fight you, but transgress not the limits. Truly, Allah likes not the transgressors. [This Verse is the first one that was revealed in connection with Jihad]¹⁹

Some Muslims interprets the above verses as a direct order to fight the non-Muslims and had abrogated the Medina surahs.²⁰ The above revelation is solely relied upon by the Jihadist waging War upon civilians like what is happening in Syria and Nigeria today. In the same vein, there

are those who felt that it cannot be right because Islam strongly disallow the killing of anyone without lawful justification.

The jihadist of Syria, Somalia, Kenya, Nigeria and many others had no justification because innocent civilians, women and children lost their life which is against the teaching of Islamic laws enshrined in its primary and secondary sources. The prophet also prevented the killing of women and children even in active warfare.

Those that took the revelation as a call to establish their faith had no cause to fight the unbelievers except where the persecution will disallow them to practice their faith, this is fighting in self-defence. This group relied on the saying of the prophet (SAW) that called Jihad An-Nafs (against oneself) as the greater jihad.

The other group that sees the revelation as instructing the Muslims to honour treaty and truce or when the non-Muslims are under the protection of the Islamic state paying Jizyah (Tax) never to engage in fighting them except where the opposing party breaks the treaty. In that case to them fighting becomes permissible.

The last group that agreed war is to be waged on the non-Muslim for their disbelief are the shafi'e school. This group relied on the saying that jihad is a collective duty enjoined on all Muslims to fight unbelievers 'wherever you may find them' as provided by the Quran,²¹ even though it's not an obligation on all Muslim so long others can perform it.

The Hanafi school on the other hand are of the view that a normal state of war existed between Islamic and non-Islamic territories, however they did not agree that jihad is to be wage against the non-Muslim solely on account of their disbelief. They belief that tolerance should be shown to non Muslims especially the people of the book (Ahli-kitab) and only to be engage in war when the non-Muslim leaving outside the territory of Islam came into conflict with Islam.

During the lifetime of the prophet Muhammad the whole of Arabia is engulfed with ignorance (Jahiliyyah period) hence armed jihad by the prophet is inevitable in self-defence. And relying on such battle fought by the prophet by some

¹⁷ Quran4V95

¹⁸ Among those that agreed with this concept are the Al-Qaidah, Isis, Boko Haram etc

¹⁹ Quran 2V190

²⁰ Rudolph Peters. Jihad in classical and modern Islam (Markus Wiener) 1996

²¹ Quran9V5



people today cannot be the same because the Jahiliyyah period of persecuting Muslims is not the same today.

Jahiliyyah period is explained by Ja;afar bn Abi Talib when the Muslims were asked by the Negus to describe their religion, they distinguished themselves from the old pre-Islamic system of Jahiliyyah in the following way.

We were an ignorant (pre-Islamic) people...worshipping idols, eating improperly butchered meat, committing abominations, breaking kinship relations, treating guest badly, and our strong devoured our weak. We lived that way until God sent us a messenger.....commanded us to be truthful in speech, trustworthy, to honor ties of kinship, be hospitable, and refrain from forbidden things and bloodshed. He forbade us to commit abominations, speak falsely, devour the property of orphans, and slander the unblemished reputation of women....²²

The prophet fought the battle of Badr in 624 CE, Uhud in 625 CE and the battle of Khaibar (628 CE); in all the above, Muslims were attacked by superior forces. The origin of jihad is for self-defence but it is worth mentioning that Muslims in the lifetime of the prophet in the conquest of Mecca had attacked Mecca in the year 630 CE. The Muslim stormed Mecca in order to take control of their most important place of worship (the holy Kaaba)²³. Justified as this may have been, it was not in self-defence, in this instance jihad is used in connection of a conquest.

Some jihadist today relied on the above conquest to bomb places all in the name of establishing Islam. The motive of the prophet then is to establish Islam when in its infant stage and established Islamic state (Darul-Islam). Today Islam is firmly established no one is persecuted because he is a Muslim, what could be the justification of waging war in the name of establishing Islam?

²² Reuven Firestone Jihad: The Origin of Holy War in Islam (Oxford University Press 1999)

²³ The Kaaba is Islam's holiest place. It is where prophet Ibrahim (Abraham) (AS) built the first house of worship of God, and where Ibrahim (AS) was ready to sacrifice his first born, Isma'il (Ishmael) which God redeemed with a ram (or sheep).

Muslims believe that jihad is legitimate because it encompasses the rules governing conduct and state affairs. Just like a government cannot function without army, it needs strict laws of deterrence in order to run its affairs.

The Christian scripture (the holy bible) speaks about resistance to persecution in the cause of God. The holy Bible provides;

'Blessed are they who are persecuted for righteousness sake; for there is the kingdom of heaven'²⁴

'And everyone that had forsaken houses, or brethren, or sisters or father or mother or wife or children or lands for my sake, shall receive on hundred sold and shall inherit everlasting life'²⁵

'He that findeth his life shall lose it and he that loseth his life for my sake shall find me'²⁶

It is useful in fighting tyranny and oppression, to regulate the means for achieving peace and strength and inculcating a moral responsibility.

Jihad as military legal doctrine-Siyar conveys the sense of a journey or an epic and can be seen as Islamic international law. It comprises law on treaties, safe passage for non-Muslims and aspects of what would be called today as use of force and the law of war.

The development of the doctrine of jihad has a change in dimension during the 8th century. The Abbasid Empire was the most powerful international political force, hence modern rules and procedure is needed in order to establish the Islamic law for the nation. The Siyar then is mostly derived from the existing customs and reasoning in greater degree than from the primary and other sources.

In Siyar, the world is divided into Dar'al-Islam (territory of Islam) and Dar'al-Harb (territory of War). The Dar'al-Islam comprises the Islamic community and non-Islamic communities who had accepted to be under the protection of the Islamic state. It comprises Muslims and non-Muslims that are in alliance with Islam. It also comprises Jews and Christians (people of the book) who are willing

²⁴ Holy Bible, Matt. chapter 5:20

²⁵ Ibid chapter 10:29

²⁶ Ibid chapter 10:39



to pay Jizya (Tax) in order to be accorded protection by the Islamic authority from any foreign attack. The non-Muslim are subjected to their law and free to practice their own belief. In return the non-Muslims will not fight or help anyone to fight the Muslims or those that had signed treaty with the Muslims.

Relationship between the Islamic and non-Islamic communities within the Dar'al-Islam is regulated by a special agreement binding upon all parties which is issued by the highest Islamic authority like the Imam or caliph.

The Dar'al-Harb is the rest of the world which includes other nations and territory not under the sovereignty of the Islamic state; it is referred to as the territory of war. Majid Khadduri²⁷ is of the view that it was deemed the work of the caliph if there is the possibility to bring the Dar'al-harb under Islamic authority. Because the Dar'al-Harb did not carry any implied status under the Islamic law, agreement entered with them should be of a short and temporal nature.

Although a state of war is presumed to exist between the Dar'al-Islam and Dar'al-Harb but it's not a no go area this is because the hostile relations is regulated by the Islamic law of war. This implies that Muslims are obliged to respect the rights of non-Muslims both combatant and civilians whenever fighting was in progress. And when fighting ceases, the Islamic state recognizes the sovereign authority of the Dar'al-harb. The same goes to a Muslims who entered the Dar'al-Harb as a merchant or visitor under a safe-conduct (aman) he is obliged to respect the authority and adhere to their laws as long as he remained in that territory. This is because he is enjoying security because of the Aman or because of an existing treaty between the two (2) states.

The division of the world into dar'al-Islam and Dar'al-Harb did not mean that military action in the Dar'al-Islam was without restraint. First force could only be used to advance or defend Islam. This also did not mean that there was an obligation to conquer. A great caution is also attached in the works over this aspect. Majid Khadduri²⁸ shared a

different view saying there is an obligation on the Dar'al-Islam to conquer the Dar'al-Harb.²⁹

The use of force on the dar'al-harb to be under the Islamic government can amount to compulsion. This is against the teaching of Islam unless all the avenues are exhausted because the Quran provides that *'there is no compulsion in religion'*³⁰. By making the dar al-harb to be under the dar al-islam or disappear, amounts to compulsion.

Jihad is a collective and not an individual duty and can only be sanctioned by a political authority like an Imam or caliph. The caliph or imam as the case maybe is an authority derived from a high moral integrity charged with the responsibility of regulating the conduct of the political community (Umma) with the outside world in accordance with the sacred law. Islam which is a set of religious ideas and practices within a community has its Umma as the subject of the legal and ethical system whereas all other communities are the object of the system.

Even though it's a collective duty Shafi'e is of the view that not every individual Muslim is necessarily obligated to fight. Shafi'e goes on to explain that if the duty were fulfilled by some; the others would be relieved, but if none fulfilled it, all would be subject to punishment.³¹

It is among the basic principle of jihad that an Imam or a leader is present and gives the order. The Aamir must be person that is recognised and given allegiance by the Umma as the leader of the community of Muslims. This goes on to show that any war fought without prior permission from the Imam cannot fall within the definition of jihad. When one is attacked for example by another and he defends himself it cannot be jihad (Fisabilillah) but rather mere fighting because of the lack of permission from an Imam.

Quran said;

'Obey Allah; obey the messenger and those in authority amongst you'

But just because it's not jihad it doesn't mean that one should allow himself or his property to be

²⁷ Majid Khadduri. The Islamic law of nations: Shaybani's Siyar (supra)

²⁸ Majid Khadduri The Islamic Law of Nations (Shaybani's Siyar) the John Hopkins Press, Maryland (1966)

²⁹ Ibid p.17

³⁰ Quran2V256

³¹ See Shafi'e Risala ed. Shakir (Cairo, 1958), p.364-68



destroyed by another simply because it is not jihad that attracts reward from Allah.

The Prophet is reported to have said that whoever as a result of defending himself died is a shahid (martyr). Also whoever died defending his property is also a shahid. Whoever died defending his honour or that of his family as when another person wanted to harm his wife or daughter, if he was killed trying to protect them, the prophet Muhammad said he is a shahid but that the statue of those that died in jihad for the sake of Allah is higher.

It can be understood from the above that jihad had its own rules and procedure failure of which makes it a nullity. So today those that took upon themselves to fight in the name of jihad must fulfil the conditions laid down otherwise it cannot be jihad. The like of Boko Haram fighting has nothing to do with Jihad but a quest for personal aggrandizement.

TYPES OF JIHAD

Jihad is divided into many parts, this shows that it is not fighting war that is jihad. Majid Khadduri³² divides jihad into 4 groups. In his words;

‘...this participation might be fulfilled by the heart, the tongue, or the hands, as well as by the sword. The jihad was accordingly a form of religious propaganda carried out by spiritual as well as by material means’³³

(a) **Jihad by heart:** It means jihad carried out by one fighting his heart desire which is against the teaching of Islam. This is called the greater jihad by the prophet Muhammad (saw) after returning from battle. The prophet said they have just returned from lesser jihad and when asked about the greater jihad he said ‘It is the struggle against oneself’³⁴

(b) **JIHAD BY TONGUE:** It means using one’s tongue to command people to do what is right and forbid them from doing wrong. The prophet said: ‘One should remain silent than to utter words of no meaning’.

(c) **JIHAD BY HAND:** This consists of the actual administering Islamic disciplinary majors and principles.

(d) **JIHAD BY SWORD:** This consists of actual warfare in defence of oneself and or from enemies.

The permission for jihad was given on account of the following reasons among others;

(a) Innocent Muslims were persecuted in the early days of Islam.

(b) If the permission of jihad were not given after the Hijrah, the mosque of the holy prophet could have been destroyed.

(c) The permission for jihad was granted at that time so that Islamic principles can be established.

JIHAD AND TERRORISM

Charles W. Yost in his book ‘Forms and Marks of Terrorism’ explains that Islam and terrorism are synonymous. Since the attack of the world trade centre in New York a lot have been said about Islam. Many Muslim organisation and nation were accused of engaging in terrorist activities.

Organisations such as the Islam salvation front of Algeria, the Islamic brotherhood of Egypt, Al-Fatah and Hamas, Al-Qaeda and host of others are at the fore-front as perpetrators around the world. This is so because most of the time the organisation concern claimed responsibility. Some viewed America as terrorist given their invasion of Afghanistan and Iraq. The question is what is terrorism?

The encyclopaedia Britannica defines terrorism as a

‘Systematic use of terror or unpredictable violence against governments, public or individuals to attain a political objective’³⁵.

International treaty like the Convention of the OIC on Combating International Terrorism defines terrorism in Article 1(2) as;

Any act of violence or threat thereof notwithstanding its motive or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperilling their lives,

³² Majid Khadduri. The Islamic law of nations: Shaybani’s Siyar. Xii (1966)

³³ Ibid @ page 15

³⁴ Muhammad al-Ajlouni, Kashf al-Khafa’ Hadith no. 1362 (Mu’asat al-Risala 1988).

³⁵ The new Encyclopaedia Britannica Vol. 11, 15th edition USA 1988. P.650



*honour, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resources, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent states.*³⁶

From the above definition, terrorising people or threatening them with harm amounts to terrorism. So long as the threat endangers lives, honour, rights freedom and security of individual it amounts to terrorism. Terrorism can also be levelled against public or private property through seizure or any form of unacceptable level of damage.

The source of terror cannot be from Islam because it's contrary to its teaching; there is no room for terrorism in Islam. Jihad is peaceful and defensive in its nature hence compatible with modern international law precept on the use of force³⁷. This is made clear in the holy Quran and the Sunna of the holy prophet (SAW).

The Quran says:

*'Because of that We ordained for the Children of Israel that if anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind...'*³⁸

The prophet (SAW) had said:

'Help your brother when he is oppressed or oppressor.' The companions asked 'how can we help him when he is oppressor? The prophet replied; stop him from oppression'.

CONCLUSION

The actual meaning and purpose of jihad is hijacked by fanatical Muslims hence the controversy. Some nine months after September 11, Zeyad Yasin a 22 year-old biomedical student gave a speech at Harvard entitled 'My American Jihad of

Faith and Citizenship' which draw a wide and heated debate as to what Jihad connotes. To Yasin Jihad in its truest and purist form means a constant struggle to do what is right, a 'self-purification and awareness, public service and social justice. On the global scale, it is a struggle involving people of all ages, colours and creeds, for control of the big decisions: not only who controls what piece of land but more importantly who gets medicine and who can eat'.

This is what jihad is understood to mean by many Muslims which goes in line with the Arabic word meaning 'effort'. This does not mean that jihad has no other meaning and uses, this can be seen in some of the actions of the likes of al-Qaeda, Isis, Boko Haram and other extremist group who not only hijacked, appropriated and abused the term but viewed jihad as a 'holy war' aimed at wiping the infidels lest they become Muslims or at least follow its principle.

Yasin arguments about jihad as a struggle for justice can be traced back to Islamic culture and law. One thing that is clear is that jihad in Islam is the effort to struggle whereas the extremists hijacked it and gave it another interpretation which is not accepted by the civilized society.

Terrorist hides behind the misnomer of Islamic fundamentalism to perform all kind of atrocity thereby given Islam a bad name. Jihad and terrorism are far and opposed to each other. Jihad is a war fought to defend Islam against armed aggression, whereas terrorism (extremist's jihad) connotes continues and world-wide campaign and targeting of the West without recourse to civilian and military targets. Such action causes unnecessary loss of life and a genocide which is vehemently prohibited in Islam.

Financing terrorist and terrorist organisation is against Islamic law. Whoever finances such atrocity has no justification as far as Islamic law is concern. Islam only accept deed perform in the cause of God

Finally, while Islamic jihad is an acceptable form of warfare sanctioned by Islam though its meanings are mixed up depending on which one is done for the sake of God Almighty and or for political reason. Terrorism classified by whatever name or style is not acceptable in Islam and Islamic law. Jihad cannot be used to justify terrorism as it is a breach of both the use of force and the law of war in Islam.

³⁶ Javaid Rehman Islamic State Practices, International Law and the Threat from Terrorism: A Critique of the Clash of Civilisations in the New World Order. Hart Publishing Oxford and Portland, Oregon (2005)

³⁷ Bernard. K. Freamon. Martyrdom, suicide and the Islamic law of war: A short legal history. Fordham International Law Journal. 2003.

³⁸ Quran5:32



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