

A COMPARATIVE ANALYSIS OF WAR CRIMES AND CHILDREN'S RIGHTS IN THE LIGHT OF ISLAMIC LAW & AFGHAN LAW ON PROTECTION OF CHILD'S RIGHTS

MOHAMMAD IBRAHIM SEDQI

PHD RESEARCH SCHOLAR, DEPARTMENT OF ISLAMIC STUDIES, UNIVERSITY OF PESHAWAR, PESHAWAR, PAKISTAN. EMAIL: Ibrahimsedqi932@gmail.com

DR. SALEEM KHAN

DEPARTMENT OF ISLAMIC STUDIES, UNIVERSITY OF PESHAWAR, PESHAWAR, PAKISTAN.
EMAIL: saleemkhanisl@uop.edu.pk

ABSTRACT

Although there are numerous academic and legal writings on war crimes and children's rights, a comparative study between Afghan national laws, Islamic Sharia, and international principles has not yet been conducted. The ongoing conflict in Afghanistan poses a serious threat to the lives, upbringing, and future of children, as children are recruited by armed groups in conflicts and are deprived of their human rights. The purpose of this study is to conduct a legal comparison between Afghan laws, Islamic Sharia, and international treaties (such as the Geneva Convention) in the field of protecting and safeguarding children from war crimes, and to draw the attention of governments and the general public to the non-violation of children's rights. This study was conducted according to the Library Research approach, which provides an analytical and comparative analysis using reliable sources of Islamic Sharia, the Afghan Penal Code (2017), the Child Rights Protection Law (2019), and international conventions. The findings of the study show that Islamic law strictly prohibits the use of children in war, as Allah Almighty has commanded non-aggressive war in verse (190) of Surah Al-Baqarah, and the Hadith of Abdullah bin Umar (may Allah be pleased with him) is a clear example of the Prophetic practice. The Afghan Penal Code (Article 605) criminalizes the military recruitment of children, and the Child Rights Protection Law (Article 34) makes states responsible for the protection and reintegration of children affected by war. The study concludes that the recruitment and participation of children in wars is prohibited both in terms of Sharia and law. It is recommended that the Afghan government and civil society take practical steps to prevent the recruitment of children and raise public awareness, prosecute perpetrators of war crimes, and provide children with a peaceful, educational, and peaceful environment so that they can become members of a prosperous society in the future.

KEYWORDS: Geneva Convention, Child, War Crimes, Afghanistan Penal Code, Law on Protection of Child Rights

INTRODUCTION

Since the creation of humanity, wars have started between humans to secure their own interests and continue to this day. Humans commit war crimes during wars. During wars, neutral people such as civilians, women and children, the wounded, prisoners... must be protected. In the aforementioned conflicts, the protection of children, especially children, against war crimes is very important. The attention of governments and the general public should be drawn to this issue to prevent the aforementioned violation of children's rights. Because wars have existed in human society in general and in Afghanistan in particular for a long time and are still ongoing. Usually, children are used in these wars and children are harmed. The level of awareness of the government and the public in this regard is very low and research should be conducted on this issue. There are enough articles on the subject, but there is no article that compares the protection of children against war crimes with the laws of Afghanistan, especially the Afghan Child Rights Support Law. Afghanistan is a war-torn country, the literacy rate of the people is low, there is no information about war crimes and the protection of children against these crimes, and children are often seen in combat units. In order to raise public awareness and attract people's attention, a comparative research gap was felt in the light of Islamic Sharia and law. This research is being conducted with the aim of filling this scientific gap. The objectives of the research can be summarized as follows: The members of the society should understand that according to Islamic Sharia and the laws of Afghanistan, protecting children against war crimes is their religious, legal, human and moral responsibility. Military officials should understand that the recruitment of children in military units is legally prohibited and should refrain from it. To draw the attention of government officials to the settlement and integration

of children affected by war crimes into society. To draw the attention of the government and the judiciary to the legal prosecution of individuals and groups involving children in war crimes.

LITERATURE REVIEW

The foundation of any scientific research is to clarify the relationship between its subject and previous scientific studies. Therefore, in order to demonstrate the scientific innovation, originality, and legal significance of this study, the following three important studies have been compared with the subject of this study. The points of similarity and dissimilarity of each study are described in detail, to clarify in which areas this study has common features with other scientific works and in which areas it differs from them.

This study “Protection of the Child in Wars: A Comparative Study of International Law and Islamic Sharia,” was conducted by Asiya Abdulrahman Al-Shehri as a doctoral student at the Faculty of Law, King Abdulaziz University, Saudi Arabia, under the supervision of Professor Ahmed Salim Ataya, and was published in the Arab Journal for Scientific Publishing (AJSP) in 2024. This study broadly examines child protection in conflict situations through a comparative analysis of Islamic Sharia law and international humanitarian law. Both studies discuss the protection of children and the observance of their fundamental rights during conflict. Both studies attempt to assess the human dimension of child protection, the prohibition of violence against children, and the principles of war from the perspective of Islamic Sharia law. Both studies mention the religious, moral, and legal foundations for preventing child victimization during conflict.

The aforementioned study focuses on a comparative analysis between international treaties (such as the Geneva Conventions and the International Convention on the Rights of the Child) and Islamic Sharia law, while our study only conducts a comparative analysis of the Afghan Child Rights Protection Law from the perspective of Islamic Sharia law. Al-Shahri’s research is in the form of a theoretical and international study, but this study is based on the practical and internal legal realities of the Afghan legal system. Our study focuses specifically on war crimes, while the above study discusses the broader concept of child protection.

This study, “Crimes Violating Child Rights,” was conducted by the International Development Law Organization (IDLO) in Dari and was published in 2020. This study examines the judicial aspects of child rights violations under Afghan law and attempts to provide reform proposals to strengthen the legal status of children.

Both studies examine the issue of child rights violations, their protection, and legal protection. Both studies assess the legal status of the implementation of child rights through an analysis of Afghanistan’s national laws. The aforementioned study focuses on violations of general aspects of children’s rights (education, health, custody, nutrition, work, testimony, and legal guardianship), while our study is dedicated to the legal framework for protecting children during war crimes. IDLO’s study is analytical-descriptive in nature, while our study is comparative-analytical in nature, focusing on finding the practical relationships between Islamic Sharia and national law. Our study provides an interpretation of children’s rights in light of the specific situation of war, which IDLO’s study does not.

This article, “Children’s Rights from the Perspective of Law,” was written by Dardana Fazaili and was published by the Ministry of Justice’s Publications Agency on 31/3/1398 in issue 192. This study examines the rights of children to life, identity, custody, breastfeeding, and nutrition from the perspective of Afghan laws and international conventions. Both studies analyze the rights of children enshrined in Afghan law. Both studies emphasize the importance of harmonizing Islamic values and legal provisions.

Fazaili’s study is about the general rights of the child, while our study examines the specific rights of children to protection in situations of war. The aforementioned articles mention Islamic Sharia as a confirmation, but do not provide a comparative analysis. Our study is based on an analytical and comparative basis between the principles of Islamic Sharia and the Afghan Child Rights Protection Law. Our study addresses the issue of legal protection for victims of war crimes, especially children, which is not included in Fazaili’s study.

Based on the comparative analysis of this study with the above studies, it is clear that this study is not focused on the general field of child rights protection, but rather on the protection of children in conflict situations, legal protection, and the practical relationship between Islamic Sharia and national law. This study attempts to fill an important legal gap in the Afghan legal system, because no previous study has examined the Afghan child rights protection law from the perspective of Islamic Sharia in a detailed and comparative manner. Therefore, this study is considered an important scientific innovation for the Afghan legal system, both scientifically and practically.

Article (34) of the Law on the Protection of the Rights of the Child of the Islamic Republic of Afghanistan is explicit about this right: Relevant ministries and government agencies are obliged to take necessary measures to support the physical and mental rehabilitation of a child who has suffered from neglect, exploitation or sexual abuse, torture or any other cruel, inhuman and degrading treatment or as a result of punishment or armed conflict, and to help the child’s health, self-esteem and dignity, for the establishment and reintegration of the child. Since the study discusses issues related to the rights of the child, it is necessary to first define the child according to Sharia and law.

The concept of Child

If we refer to the Arabic dictionaries, the child is called the young of any animal, such as: Farahidi, may God have mercy on him, says: الصَّغِيرُ من أولاد للناس والبقر والضئبا

Translation: The child is called the young of humans, cows, gazelles, and so on. Ibn Faris, May God have mercy on him, says: (The child) is the correct origin of the word, and is rejected, then it is measured, and the origin is: the young born; it is said: he is a child, and the female is a girl. Translation: Taa, Faa and Laam are correct roots that include many things, then other things are compared to them. And originally it is called a small child or a child. The Arabs say: هو طفل, meaning he is a child, and the feminine form is: طفلة

There are many terminological definitions of the child, here I will only quote the definition of the child from the four famous schools of Islamic law: Hanafi jurists say: And the boy, as I said, is applied to the boy from the time he is born until he reaches puberty. Translation: The child is applied to the child from birth until he reaches puberty. Maliki jurists said: A child is one who has not reached puberty, whether male or female. Translation: A male or female child who has not reached puberty. Shafi'i jurists said: A child is called a child from the time of separation until puberty.... Translation: A child is called a child from the time of separation until puberty. Hanbali jurists said: An infant is called a person who has not reached puberty. Looking at the above definitions, we can conclude that the definitions of all four schools of thought converge on one point, which is puberty. Accordingly, anyone who has not reached puberty is called a child, and the jurists have mentioned the signs of puberty, which are: sexual intercourse, ejaculation, and the growth of hair around the genitals.

The laws of Afghanistan have mentioned a certain age for a child and a child is applied to a person who is less than (18) years of age. The Law on the Protection of the Rights of the Child of the Islamic Republic of Afghanistan is clear in this regard: A person who has not completed the age of eighteen. Similarly, the Penal Code of Afghanistan is clear in this regard: A child is applied to a person who has not completed the age of eighteen. The law has mentioned the age of puberty (18) regarding the legal age of a child, and the jurists have mentioned puberty. If we compare the two, there is no contradiction between them, because the Hanafi jurists have also mentioned age in addition to the signs of puberty. It is narrated in this regard: The boy reaches puberty with menstruation, menstruation, and ejaculation, if he has not done so, until he reaches eighteen years, and the girl reaches puberty with menstruation, menstruation, and ejaculation, if he has not done so, until she reaches seventeen years, and this is according to Abu Hanifa. Translation: A boy's puberty is determined by the onset of menstruation, conception, and ejaculation during sexual intercourse. If these conditions are not met, then it is up to the age of eighteen (18). A girl's puberty is determined by menstruation, ovulation, and pregnancy. If these conditions are not met, then it is up to the age of seventeen (17). This is the opinion of Imam Abu Hanifa (may Allah have mercy on him).

Legal Analysis

Article 34, which discusses the rehabilitation of a child with a disability in the fifth chapter of the law, has been discussed in several parts in the rehabilitation section, in which Article 34 discusses the physical and mental rehabilitation of a child with a disability. In this article, the relevant ministries, which are usually referred to as the Ministry of Labor and Social Affairs and the Ministry of Public Health, are obliged to assist children who have been harmed due to negligence, i.e. due to parental negligence, exploitation, i.e. due to exploitation in an unprincipled and illegal manner in the field of work, for example, due to overwork and overwork, or due to being forced to do work that does not suit the child's temperament, or has been subjected to sexual abuse. In Pashto, "ځارا" means the correct or correct equation, and "ځارا" means wrong or incorrect. Sexual exploitation of a child is generally a crime according to Sharia and law, because the law here defines abuse as the use of the term "exploitation" is incorrect in my opinion. It should have referred to sexual exploitation in its entirety, because there is no right or wrong in sexual exploitation, but rather any type of exploitation is wrong. Similarly, children who have been victims of torture or any other inhumane and degrading treatment are another large part of the most vulnerable children in the world. Children who have been victims of punishment or armed conflict constitute the majority. National and international efforts have been made to protect and support children who have been victims of war.

Protection of children in war crimes from the perspective of international conventions

There are several international agreements on the protection of children in wars, in particular the Geneva Conventions. The Convention on the Rights of the Child (CRC) has special provisions on the recruitment of children in wars and the rights of children affected by wars. Article (38) of the said Convention on the recruitment of minors in the military is clear as follows: States Parties to the Convention undertake to respect and to ensure respect for the rules of international humanitarian law relating to children, when the need for their application arises in situations of armed conflict. States Parties to the Convention shall take all necessary and feasible measures to ensure that persons who have not attained the age of fifteen (15) years do not participate directly in hostilities. States Parties shall refrain from recruiting into their armed forces persons who have not attained the age of fifteen (15) years. In the event of recruitment, States Parties shall endeavour to give priority to those who are of the oldest age. In accordance with the obligations of the international humanitarian law system requiring the protection and safety of civilians in armed conflicts, States Parties shall take all necessary and feasible measures to ensure the protection and care of children affected by the effects of conflict. Similarly, Article (39) of the Convention on the Reintegration and Social Integration

of Children Affected by War or Other Causes states: States Parties shall take all appropriate measures to ensure the physical and psychological recovery and social reintegration of a child who has been a victim of any form of neglect, exploitation, abuse, torture, cruel, inhuman or degrading treatment or punishment, or of armed conflict. Such recovery and reintegration shall take place in an environment that promotes and ensures the child's health, self-respect and dignity.

In addition to the above legal provisions, it is also worth mentioning the provisions that are related to the rights and protection of children, although they are indirectly related to children, but are of particular importance in the areas of family unity, education, and the protection of pregnant women and mothers of young children. These provisions of international humanitarian law guarantee special legal protection to children. This protection is in addition to the general protection provided for civilians, so that children are protected from serious harm in armed conflict. However, when children take a direct part in hostilities, the general protection of civilians is lost; however, the protection provided for children remains in place for them. The Third and Fourth Geneva Conventions and Additional Protocol I apply only to international armed conflicts, while Additional Protocol II applies to non-international armed conflicts. The scope of application of each part and chapter of the Fourth Geneva Convention is specifically defined. The provisions of Articles 14 to 26 of this Convention apply to all persons on both sides of an armed conflict. In contrast, the provisions of Article 27 onwards are reserved only for those who are considered "protected persons". Protected persons are those who are under the authority and control of a party to an armed conflict (including occupying forces), but do not have the nationality of that party. Article 605) of the Afghan Penal Code states that recruiting a child into military units is a crime, which states: A person who recruits a child into military service or uses him/her in the service of military units commits a crime and shall be punished in accordance with the provisions of this chapter. Article (606) states: If a person in charge of a military unit recruits a child into a military unit, he/she shall be sentenced to short imprisonment. Article (34) of the Law on the Protection of the Rights of the Child stipulates that such children must be integrated and settled in society, i.e. placed, so that these efforts of government agencies can help protect the child's health and self-esteem.

Comparison of the text of the article with Islamic Shariah

Islamic Shariah, like other sectors of society, has paid special attention to the rights of the child. In its rulings, it has ordered the protection of the child's emotions, compassion and kindness. There are wars in the world and children, who are neutral individuals and cannot fight, are still victims despite many efforts and efforts. Islamic Shariah has prohibited children from being victims in wars. It has encouraged Muslims to take the necessary legal, legal and humanitarian measures to protect children. For children not to be victims in wars, Islamic Shariah has prohibited the recruitment of children in wars hundreds of years before international treaties and laws. Islamic Shariah has ordered to fight those who fight believers, and those who do not fight should not be fought. Children cannot fight, so the protection of children in war situations is a necessary command. There are many general and specific texts in this regard, such as Allah Almighty said:

وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ.

Translation: And fight in the way of Allah against those who fight you, and do not transgress. Indeed, Allah does not love transgressors.

Imam Qurtubi, may God have mercy on him, writes in his interpretation of the mentioned verse:

فَكَانَ عَلَيْهِ السَّلَامُ يُقَاتِلُ مَنْ قَاتَلَهُ وَيَكُفُّ عَمَّنْ كَفَّ عَنْهُ، حَتَّى نَزَلَ "فَقَاتِلُوا الْمُشْرِكِينَ" فَتَسَخَّتْ هَذِهِ الْآيَةُ، قَالَهَا جَمَاعَةٌ مِنَ الْعُلَمَاءِ. وَقَالَ ابْنُ زَيْدٍ وَالرَّبِيعُ: نَسَخَهَا "وَقَاتِلُوا الْمُشْرِكِينَ كَافَّةً"، فَأَمَرَ بِالْقِتَالِ لِجَمِيعِ الْكُفَّارِ. وَقَالَ ابْنُ عَبَّاسٍ وَغُمَرُ بْنُ عَبْدِ الْعَزِيزِ وَمُجَاهِدٌ: هِيَ مُحْكَمَةٌ، أَيْ قَاتِلُوا الَّذِينَ هُمْ بِحَالَةٍ مِنْ يُقَاتِلُونَكُمْ، وَلَا تَعْتَدُوا فِي قَتْلِ النِّسَاءِ وَالصَّبْيَانِ وَالرُّهْبَانِ وَتَبَهُيْهِمْ، عَلَى مَا يَأْتِي بَيَانُهُ. قَالَ أَبُو جَعْفَرٍ النَّخَّاسُ: وَهَذَا أَصْحَحُ الْقَوْلَيْنِ فِي السُّنَّةِ وَالنَّظَرِ، فَأَمَّا السُّنَّةُ فَحَدِيثُ ابْنِ عُمَرَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ رَأَى فِي بَعْضِ مَعَارِيزِهِ امْرَأَةً مَقْتُولَةً فَكَّرَهُ ذَلِكَ، وَنَهَى عَنْ قَتْلِ النِّسَاءِ وَالصَّبْيَانِ.

Translation: The Messenger of Allah (peace and blessings of Allah be upon him) used to fight whoever fought him, and he used not to fight whoever did not fight him, until "So kill the polytheists" was revealed, then this verse was abrogated. This is what a group of scholars said. Ibn Zaid and Rabi' (may Allah have mercy on them) said that this verse was abrogated along with "And fight the polytheists all together" because it commanded fighting all the disbelievers. Abdullah ibn Abbas (may Allah be pleased with them), Umar ibn Abdul Uzayr and Mujahid (may Allah have mercy on them) said: This verse is firm, meaning: Fight whoever fights you, and do not transgress by killing women, children, monks and the like. Abu Ja'far al-Nahhas said, looking at the hadiths: This is the correct statement among the sayings, because it was narrated in the hadith of Abdullah ibn Umar (may Allah be pleased with them). When the Messenger of Allah (peace and blessings of Allah be upon him) saw a woman killed in some of the battles, he considered it bad and forbade the killing of women and children.

Just like civil law, Islamic Shariah has prohibited the use of children in wars and has not permitted children under fifteen (15) years of age to participate in combat. Regarding this matter, Abdullah ibn Umar (may Allah be pleased with him) narrates:

عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ عَرَضَنِي رَسُولُ اللَّهِ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ- يَوْمَ أُحُدٍ فِي الْقِتَالِ وَأَنَا ابْنُ أَرْبَعِ عَشْرَةَ سَنَةً فَلَمْ يُجْزِنِي وَعَرَضَنِي يَوْمَ الْخَنْدَقِ وَأَنَا ابْنُ خَمْسِ عَشْرَةَ سَنَةً فَأَجَازَنِي. قَالَ نَافِعٌ فَقَدِمْتُ عَلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَهُوَ يَوْمِئِذٍ خَلِيفَةُ فَحَدَّثَنِي هَذَا الْحَدِيثَ فَقَالَ إِنَّ هَذَا لَحَدٌّ بَيْنَ الصَّبِيرِ وَالْكَبِيرِ. فَكُتِبَ إِلَى عَمَلِهِ أَنْ يُقَرَّضُوا لِمَنْ كَانَ ابْنُ خَمْسِ عَشْرَةَ سَنَةً وَمَنْ كَانَ دُونَ ذَلِكَ فَاجْعَلُوهُ فِي الْعِيَالِ.

Translation: Nafi' narrated from Abdullah ibn Umar (may Allah be pleased with him) that: I was sent to the Messenger of Allah (peace and blessings of Allah be upon him) in the Battle of Uhud when I was fourteen (14) years old, so he did not allow me, and I was sent to the Battle of the Trench when I was fifteen (15) years old, so he allowed me. Nafi' said: I went to Umar ibn Abdul Aziz (may Allah be pleased with him) when he was the Caliph at that time, so I narrated this hadith to him, so he wrote to his officials: "Give a salary to whoever is fifteen years old! And count whoever is younger than that among the dependents (children).

It is clear from the above hadith that the recruitment of children in wars is prohibited. The hadith also states that Abdullah ibn Umar (may Allah be pleased with him) was allowed to enter the trench at the age of fifteen. The apparent meaning of the words is participation in the war. However, the commentators of the hadith have said that what is meant by this is that whatever reward is given to the fighters (warriors) from the booty should also be given to the fifteen-year-old, i.e. this permission is to take a share in the booty and in practice it means participation in the war. Imam Nawawi (may Allah have mercy on him) wrote in his explanation of the above hadith:

الْمُرَادُ جَعْلُهُ رَجُلًا لَهُ حُكْمُ الرِّجَالِ الْمُقَاتِلِينَ.

Translation: The meaning is that he made him look like an adult fighting man.

قال القاريء وقيل كتب الجائزة له وهي رزق الغزاة.

Translation: Mulla Ali Qari, may God have mercy on him, said: "Someone said, 'He has written a reward for him, and it is the provision for the conquerors.

Islamic law establishes a clear ethical framework for the conduct of armed conflict, emphasizing the protection of non-combatants and prohibiting all forms of unjustified violence. Among the foundational principles of Islamic *jus in bello* is the strict prohibition of killing children, women, monks, and any individuals who do not participate directly in hostilities. Historical reports demonstrate that whenever the Prophet Muhammad (peace be upon him) dispatched his Companions on military expeditions, he consistently issued explicit instructions to safeguard these vulnerable groups and to uphold the highest moral standards on the battlefield. In this context, the Prophet Muhammad (peace be upon him) stated

أَنَّ النَّبِيَّ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ- قَالَ «اغْزُوا بِاسْمِ اللَّهِ وَفِي سَبِيلِ اللَّهِ وَقَاتِلُوا مَنْ كَفَرَ بِاللَّهِ اغْزُوا وَلَا تَغْدُرُوا وَلَا تَغْلُوا وَلَا تَقْتُلُوا وَلِيدًا».

Translation: The Prophet (peace and blessings of Allah be upon him) said: "Fight in the name of Allah and in the way of Allah, and fight against those who disbelieve in Allah. Fight and do not betray, do not imitate, do not kill the child." عَنْ حَنْظَلَةَ الْكَاتِبِ، قَالَ: غَزَوْنَا مَعَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَمَرَرْنَا عَلَى امْرَأَةٍ مَقْتُولَةٍ، وَقَدْ اجْتَمَعَ عَلَيْهَا النَّاسُ، قَالَ: فَأَقْرَجُوا لَهُ، فَقَالَ: "مَا كَانَتْ هَذِهِ تُقَاتِلُ" ثُمَّ قَالَ لِرَجُلٍ: "انْطَلِقْ إِلَى خَالِدِ بْنِ الْوَلِيدِ فَقُلْ لَهُ: إِنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِأَمْرِكَ أَنْ لَا تُقَتِّلَ ذُرِّيَّةً وَلَا عَسِيفًا.

Looking at Islamic history, after the death of the Messenger of Allah (peace and blessings of Allah be upon him), his successors or caliphs also used the same method to forbid the commanders of wars from killing children. The first caliph of Islamic history, Abu Bakr Siddiq (may Allah be pleased with him), advised Usamah ibn Zayd (may Allah be pleased with him), who was the leader of the army:

يَا أَيُّهَا النَّاسُ، قِفُوا أَوْصِيَكُمْ بِعَشْرٍ فَاحْفَظُوهَا عَنِّي: لَا تَخُونُوا وَلَا تَغْلُوا، وَلَا تَغْدُرُوا وَلَا تَقْتُلُوا طِفْلًا صَغِيرًا، وَلَا شَيْخًا كَبِيرًا وَلَا امْرَأَةً...

Translation: O people! Stand up! I advise you of ten things, remember them from me: Do not betray, do not commit adultery, do not commit adultery, and do not kill a child, an old man, or a woman...

The scholars of Islamic jurisprudence have also paid special attention to this issue. Imam Sarkhsi, may God have mercy on him, wrote about it as follows:

لَا يَنْبَغِي أَنْ يُقَتَّلَ النِّسَاءُ مِنْ أَهْلِ الْحَرْبِ وَلَا الصَّبِيَّانِ وَلَا الْمَجَانِينِ وَلَا الشَّيْخُ الْفَانِي لِقَوْلِهِ تَعَالَى: وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُفَاتِلُونَكُمْ وَهُؤُلَاءِ لَا يُقَاتِلُونَ. (البقرة: ١٩٠)

Translation: It is not permissible to kill children, women, the insane, and the white-haired from the side of war, because Allah Almighty said: Fight in the way of Allah those who fight you. And these people do not fight. The Maliki school of thought, like the Hanafi jurists, forbids the killing of children and women, such as:

(وَلَا) يَجُوزُ أَنْ تُقَتَّلَ النِّسَاءُ وَالصَّبِيَّانِ الَّذِينَ لَا يُقَاتِلُونَ.

Translation: It is not permissible to kill women and children who are not fighting.

The Shafi'i jurists also have a similar view. Imam Sharbini (may Allah have mercy on him) wrote in Mughni al-Muhtajah:

وَيَحْرُمُ عَلَيْهِ قَتْلُ صَبِيٍّ وَمَجْنُونٍ وَامْرَأَةٍ.

Hanbali jurists have already emphasized more than three schools of thought, writing about this as follows:

وَإِذَا ظَفَرَ بِهِمْ حَرَمُ قَتْلِ صَبِيٍّ وَامْرَأَةٍ وَخَنَثِيٍّ وَرَاهِبٍ وَلَوْ خَالَطَ النَّاسَ وَشَيْخٌ فَإِنْ وَزَمَ وَاعَمَى.

Translation: When the Muslims are victorious, it is forbidden for them to kill a child, a woman, an eunuch, a monk, a white man, a cripple, or a blind person, even if they are mixed with people (combining warriors and non-warriors).

MATERIALS AND METHODS

Islamic Sharia and the Law on the Protection of the Rights of the Child of the Islamic Republic of Afghanistan have provided a number of rights to the child. One of the rights provided is the protection and assistance of children who

are victims of armed conflicts. The law has supported and protected these rights and has obliged the relevant institutions to work to create the groundwork. Article (34) of the aforementioned law has been discussed to protect this right, which has been placed under the heading of “Physical and Mental Rehabilitation”; and it has made it clear that the state provides comprehensive support to children, especially those children who have suffered as a result of armed conflicts, and takes necessary measures for their reintegration and reintegration into society. I am pursuing a doctorate in Islamic sciences at the Department of Islamic Studies at the University of Peshawar, Pakistan, and the above topic is part of my research. In this article, I have discussed the prohibition of child recruitment in armed conflicts and the right of children affected by such conflicts to live a decent life in society in accordance with Islamic Sharia.

FINDINGS

Based on the analytical and comparative study, the following conclusions were reached: Islamic Sharia prohibits the involvement of children: Islamic Sharia does not allow any kind of participation, recruitment or incitement of children to fight during wars. The verses of the Holy Quran and the Prophetic Hadiths clearly prohibit the killing and involvement of women and children. Harmony between Islamic Sharia and Afghan Law: The Afghan Penal Code (Articles 605 and 606) and the Child Rights Protection Law (Article 34) are fully consistent with the teachings of Islamic Sharia. Both emphasize the physical and psychological safety, reintegration and social support of the child. Harmony between international conventions and Sharia: The Geneva Convention and the International Convention on the Rights of the Child (CRC) provide principles that Islamic Sharia has established for many centuries; both guarantee the non-involvement of children, their protection and the right to rehabilitation after the consequences of war violence. Responsibilities of the State and Society: The Afghan government is legally obligated to provide physical and psychological rehabilitation, education, and social integration to children affected by conflict. It is also the duty of the community to raise public awareness to prevent child recruitment and exploitation. The moral dimension of Islamic and legal provisions: Protecting children is not only a legal or religious issue, but also a human and moral obligation. Ensuring the safety of children in war situations is a sign of the moral integrity of society.

The analytical findings of the study show that there is no contradiction in the fundamental principles between Islamic law, national law, and international legal documents, but rather complete harmony. Islamic law considers involvement in war to be absolutely prohibited based on the inherent dignity and human value of the child, and based on this spirit, the Afghan legal system has also established legal guarantees. The Geneva Conventions have established principles for the protection of civilians that are in direct accordance with the Sharia’s injunction “لَا تَقْتُلُوا” (Al-Baqarah: 190). This conformity demonstrates that Islamic values are compatible with the foundations of the international human rights system. The Afghan Penal Code also punishes those who recruit children in combat activities, which is in line with the prohibition of “transgression and oppression” in Islamic jurisprudence. The Afghan Child Rights Protection Law also places the responsibility of the state on the reintegration, physical and psychological rehabilitation, and social support of child victims of war. Thus, the study demonstrates that the teachings of Islamic Sharia not only form the basis of religious ethics but are also consistent with the human rights principles of contemporary law. This coherence between the existing laws of Afghanistan and the provisions of Islamic Sharia provides a practical framework within which the rights of children can be protected during war crimes.

CONCLUSION

The analytical results of the study show that there is fundamental harmony between Islamic Sharia, international humanitarian law, and the applicable laws of Afghanistan in the field of children's rights. Islamic Sharia is a system based on the principles of human dignity, justice, and mercy, and according to these principles, any form of involvement, killing, and exploitation of children is considered to be a form of oppression, violation, and evil. The Afghan Penal Code and the Law on the Protection of the Rights of the Child reflect this Islamic spirit. These laws not only criminalize the recruitment of children in armed conflicts but also clarify the state's obligation to provide physical, psychological, and social reintegration for children affected by conflict. At the international level, the Geneva Convention and the International Convention on the Rights of the Child provide principles that are fully consistent with the teachings of Islamic Sharia. This is clear evidence that Islamic values are capable of mutual respect and practical harmony with the international human rights system. The study also shows that the main reasons for the involvement of children in war in the context of Afghanistan are a lack of awareness, continuous conflict, and weak law enforcement. Therefore, it is the joint responsibility of the government, religious scholars, civil society organizations, and the media to reduce this problem through public awareness, legal enforcement, and social support. In conclusion, this study demonstrates the fact that children’s rights can be protected in the light of shared values between Islamic Sharia, national law, and international humanitarian principles, but this goal can only be achieved when the practical implementation of the provisions of Sharia and the law, government commitment, and community cooperation work together.

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