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**Islamic Law of Warfare and the Question of Suicide
Terrorism:**

An *Usuli* Twelver Shia Perspective

A thesis

submitted in partial fulfilment

of the requirements for the degree

of

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by

MORTAZA SHAMS



THE UNIVERSITY OF
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Abstract

Terrorism in the name of religion and ethnicity is the most important security challenge facing the world since the cold war. Among different types of terrorism its suicide version is the most complicated one to combat. Because a very high number of the current suicide attacks against civilian targets are executed by Muslim militants, suicide terrorism is associated with the religion of Islam. Muslim militant groups use Islamic jurisprudential terms, including jihad, to justify their otherwise felonious acts of terrorism. This tactic of sanctification of criminal acts of terrorism by use of Islamic legal terms and language may lead one to decide that it is Islamic law *per se* that is the driving force behind the current phenomenon of suicide terrorism. Since it was the Twelver Shia Muslims of Lebanon who began the use of suicide tactics in its current form, Shia Islam, as the branch of the faith in which its followers are seen as pioneers of suicide operations, is naturally the major focus of interest in this regard.

On account of the widespread use of juridical language by organisers and supporters of suicide terrorism, this thesis investigates whether suicide terrorism as such falls within the rules of legitimate warfare (jihad) as found in Usuli Twelver Shia Islamic law, or not. A detailed discussion of contested interpretations of Islam leads to an examination of Shia jurisprudence which then enables a critical evaluation of Jihad in Shia Jurisprudence and a critical discussion of jihad and suicide terrorism. Islamic jurisprudentialism, or fiqh mindedness, provides a language utilised by violent Muslim extremists who have recourse to, or who otherwise support, suicide terrorism. Furthermore, fatwas are also used by violent extremist Muslims to imbue their orders and prohibitions with a sense of religious holiness and sanction. This provides a context wherein their rulings are promoted as beyond dispute. Thus, with respect to Shia jurisprudence, the mechanism in which religious law is made will be laid bare and the criteria for distinguishing a valid fatwa will be illustrated. All

elements of Usuli Shia Islamic law which are related to warfare (as armed violence) will be discussed, and their potential to be used as a justification for suicide terrorism will be closely examined, as will the non-jurisprudential justifications which are also used. It will be argued that, for the most part, current normative uses of Usuli Twelver Shia jurisprudential justification of suicide terrorism constitutes a departure from the authentic Shia tradition.

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Mortaza Shams

Religious Studies Programme

University of Waikato

Dedication

To the loves of my life: my wife Malihe, my son Aref and my daughter

Nilofar

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Chapter One

Introduction

In today's world, intimate knowledge about Islam and Muslims is not a luxury, but a matter of mutual survival. Omid Safi¹

The purpose of this thesis is to investigate whether jihad, as a jurisprudential concept in Shia Islam, can be said to justify acts of suicide terrorism. Terrorism is one of the most significant threats facing the international community today.² The world presently faces new dimensions of terrorism and an expansion of its use. One of the new and rapidly growing forms of terrorist attack, which has made combating terrorism much more complicated, is the suicide operation. Recently the proportion of terrorist suicide operations has increased dramatically. As some statistics show, the number of suicide attacks has grown from an average of 4.7 per year in the 1980s to over 350 per year in the current decade of the 21st century. With Syria, Lebanon, Yemen, and several African countries joining the battle ground of suicide terrorism since the so-called 'Arab Spring' of 2011, the expansion of suicide terrorism has reached record highs of around 600 incidents in 2014.³ The fact that a significant shift has taken place, with

¹ Forward to Mohammad Hashim Kamali, *Sharia'h Law: an Introduction* (Oxford: Oneworld, 2008), p. vii.

² Mark Juergensmeyer, *Terror in the Mind of God*, (Berkeley CA: University of California Press, 2003), p. 5.

³ Yoram Schweitzer, Ariel Levin and Einav Yogev, *Suicide Attacks in 2014: The Global Picture*, INSS Insight No. 653, January 6, 2015. Accessible via: <http://www.inss.org.il/?id=4538&articleid=8514>

suicide bombing incidents appearing in new countries, suggests the further expansion of this kind of terrorism can be considered as bad news for the world community which rather hoped that suicide terrorism was an exceptional situation.

Although the use of suicide attacks has occurred throughout history, its main notoriety as a specific kind of contemporary violent event began in the 1980s. Accordingly, the origins of modern Muslim religious suicide attacks (known as self-martyrdom or *Istishhadi* in Persian) is found with the Shia in Iran during the Iran-Iraq War of 1980–1988. Mohammad Hossein Fahmideh, a teenage volunteer militia fighter who took part in the war, is said to be the first Muslim to have undertaken a suicide attack in contemporary history. In November 1980 Fahmideh wrapped himself in a grenade belt and threw himself under an Iraqi tank and stopped it. Ayatollah Khomeini declared Fahmideh an Iranian national hero, calling him “our leader”.⁴



A portrait of Fahmideh in one of Tehran’s streets⁵

Fahmideh’s operation was an inspiration for further volunteers for martyrdom

⁴ <http://www.tebyan.net/index.aspx?pid=52570>.

⁵ Ibid.

and on some occasions other Iranian *Basij* (volunteer militia) ran through minefields to detonate buried landmines and clear a safe battlefield path for the following soldiers.⁶ Technically, as I will show in chapter three, these kind of operations are categorized as *suicidal* tactics rather than *suicide* ones, but this does not make that much of a difference in respect to the possibility of these incidents being inspirational for the promotion of suicide tactics by Shia militants of Lebanon, for example. What happened in Iran did not attract that much attention at the time, but following the success of a 1983 truck bombing of two barrack buildings in Beirut, that killed 300 and helped drive American and French Multinational Force troops out of Lebanon, the international community faced a rapid spread of suicide operations.

Today suicide terrorism is a real global threat. Besides the suicidal use of airplanes in the United States with regards to the attack of 9/11, suicide bombings have occurred in 45 countries.⁷ Since over 80% of all suicide attacks from 2001 were carried out by Muslims,⁸ suicide bombing is often associated with the religion of Islam. Furthermore, a large number of Muslim terrorist organizations have used jihad to justify their suicide operations; hence suicide bombings are now mostly related to jihad, which in some parts of the media in the West is regarded as meaning holy war against non-Muslims. Although most Muslim scholars may consider the western media's

⁶ Ibid.

⁷ These include: Afghanistan, Algeria, Argentina, Bangladesh, Bolivia, Bulgaria, China, Djibouti, Egypt, Finland, India, Indonesia, Iran, Iraq, Israel, Jordan, Kazakhstan, Kenya, Kuwait, Lebanon, Libya, Mali, Mauritania, Morocco, Niger, Nigeria, Pakistan, the Palestinian territories, Qatar, Qatar, Russia, Saudi Arabia, Somalia, Spain, Sri Lanka, Sweden, Syria, Tajikistan, Tanzania, Tunisia, Turkey, United Kingdom, Uzbekistan, and Yemen Chicago project on security and terrorism, Suicide attack database, accessible via: http://cpostdata.uchicago.edu/search_new.php

⁸ Bruce Hoffman, *Inside Terrorism*, Columbia University Press, 2006, p. 34.

reducing the term of jihad to “war” unjustified, nevertheless war is an important form of jihad in regard to it being a jurisprudential term, as will be shown below.

While a minority of Sunni scholars refer to jihad as the sixth pillar of Islam, in fact it occupies no such official status. In Twelver Shia Islam, however, jihad is one of the 10 practices of the religion.⁹ Shia organizations which support suicide bombers, like other violent Muslim extremist groups, undertake their operations in the name of waging jihad against what they view as the enemies of God. As well as in theory, also the first practice of suicide attacks, including suicide operations on the US and the French barrack buildings in 1983, all were done by Shia organizations.¹⁰ Does the use of suicide operations by Shia Muslims mean that, as compared to other denominations of the Islamic faith, Shia Islam justifies suicide attacks more specifically? As it is claimed by those undertaking or supporting suicide attacks, are suicide attacks considered to be a justified form of waging jihad according to Shia Islam? Today most suicide attacks are against civilian targets. What then is Shia Islam’s stand on targeting or terrorizing civilian people? Having in mind that in jurisprudentialist Islam there is need for religious permission for any serious act, what is the position of Usuli Twelver Shia Islamic jurisprudence (to which all those Shia groups engaged in these kinds of attacks supposedly belong) in regard to suicide terrorism?

⁹ Muhammad ibn Jamal al-Din Makki al-Amili, *Al-Rawda al-Bahiyya fi sharh al-Luma al-Dimashqiyya*, Adab publications of Najaf, 1387L/1967.

¹⁰ Hoffman, *Inside Terrorism*, p.132.

Literature review

A term such as Jihad, as a religious concept, can be studied through different approaches, and already many studies have been done in this area. Besides some exceptions, most of the available studies on jihad can be reduced to three main categories:

1. Phenomenological and Historical studies; with a focus on studying the identity of this phenomenon as a religious concept and the history of its changes.
2. Sociological and Psychological studies; with concentration on one or more of social or psychological causes or consequences of jihad (or religious violence generally), which form the majority of the available literature on this subject.
3. Intrareligious studies; through a critical analysis approach to see how followers of the religion see jihad and react to it religiously.

Since in this research I engage in a study of the justification of suicide terrorism as a form of waging jihad in a specific branch of Islam, approaching the subject through an examination of the jurisprudence of the religion can help the most, because from a practicing Shia's perspective jurisprudence is the authority which indicates justifiability or non-justifiability of any act finally. Moreover this particular subject has not yet been studied from this specific point of view, and also there is a gap in the literature of this field which needs to be filled.

There are two main groups of resources on the jurisprudential study of "suicide terrorism as a form of jihad" from the Shia perspective. The first

group, which are actually the authoritative sources of Shia jurisprudence, are Shia classical texts which have formed what we have of Shia jurisprudence today. Although this group of resources are not directly related to suicide terrorism, which is a very recent phenomenon, still they are the ones which have drawn lines of separation between the legitimate and illegitimate use of violence (suicide terrorism being one of them) in Shia jurisprudence in the first place, and these lines of distinction are still respected by Shia Muslims. The second group are more recent academic works which specifically address suicide operations from a Shia Islamic perspective.

Regarding the first group, the classical resources of Shia jurisprudence, in this research I only refer to works of five great Shia jurists which, as will be explained shortly, represent the main body of Shia jurisprudence. Three of these jurists, namely Muhaqiq Hilli (d. 676/1277), Allama Hilli (d. 726/1325) and the First Martyr or *Shahid Awwal* (d. 786/1385), are the ones whose works have received, by far, the highest volume of commentary and attention from Shia jurists in general and they constitute the chief pillars of Shia jurisprudence.¹¹ The other two jurists whose works are of importance, albeit for a different reason, are Shaikh Tusi (d. 460/1067) and the Second Martyr or *Shahid Thani* (d. 966/1558). Shaikh Tusi, as the first Shia jurist, who also established the first major Shia seminary in 1055 in Najaf of today's Iraq, based Shia jurisprudence on the traditionism of the great Sunni jurist Imam al-Shafi`ei.

Although, later on, other jurists, including the above mentioned three great

¹¹ Mortaza Motahari, *Ashenaei ba ulum-e islami: fiqh* (Introduction to Islamic sciences: fiqh), Sdara Publications, No year, p. 70.

jurists, produced more popular works, still all followed the direction laid down by Shaikh Tusi. The Second Martyr is important because of his famous commentary on the First Martyr's treatise on Shia jurisprudence, *al-Luma al-Dimashqiyya*, which was authored in prison before his execution. It has served as a key text-book in Shia seminaries since then. There is another great Shia jurist, namely Mortaza Ansari (1281/1864), who after the above three jurists enjoys a very high position among Shia jurists¹² as a whole, but he produced no treatise on jihad.

Regarding recent works on suicide operations from Shia perspectives, there are two books, both written in Persian, published in the last decade:

1. Hasan Baqeri and Mortaza Salemi Qamsari, *Amaalyate esteshhadi chera va chegooneh? (Martyrdom operation: Why and How?)*, published in 2002.

This book concentrates on the propagation of some Palestinian groups and is far from constituting an academic work. The only item found in this book which relates to my subject of study is a Fatwa, justifying a specific kind of suicide operation in the Palestinian occupied territories, released by Sheikh Ahmad Kaftaro who is a Sunni Muslim Jurist (pp. 21-22). The book does not answer either of the two questions which are mentioned in its (misleading) title in any way. It answers neither the 'Why' question and nor the 'How' question of the title. Indeed, it would appear the writers have forgotten the title completely – the reader will become disappointed as soon as he or she endeavours to find the authors'

¹² Ibid, p. 71.

answers to the above mentioned questions.

2. Amir Molla Mohammad-Ali, *Mabanieh fiqhih amalyate esteshhadi (Jurisprudential bases of martyrdom operation: Shia` and Sunni perspectives)*, published in 2006.

This book, also written in the Persian language, is the most relevant book authored by a Shia Muslim justifying suicide operations jurisprudentially. However, the book is only focused on the jurisprudential laws of suicide operations against military targets (pp. 70-95), therefore it differs from what I discuss in my research. The justifiability of attacking the enemy when he hides himself behind non-combatants (Jurisprudential principle of *tatarros* or human shield) is the principle which the writer of this book finds helpful in justifying suicide operations inside the Palestinian territories (pp. 153-168). But it is well known that *tatarros* is not a Quranic teaching *per se* but is based on some ambiguous historical cases and therefore does not enjoy a high position jurisprudentially. The *tatarros* principle will be discussed in my research in detail below.

There is also a paradox in the book because the author regards jihad as defensive, and at the same time he considers suicide operation as a legitimate form of defensive Jihad (p. 85). He does not demonstrate how a suicide operation can be considered a defensive act when the operator is sure that he or she will die as result of the operation. Defense in Shia jurisprudence, as will be discussed below, is a quite minimal term. Defense, in its jurisprudential sense as keeping someone or something safe, is inconsistent with that of endangering – indeed ending – one's life,

as is the case in suicide terrorism. In Shia jurisprudence defense has a very limited and non-aggressive application and is supposed to cause the least harm for both the attacker and the attacked. I will point below to such inconsistencies of supporters of suicide terrorism, and I will endeavour to discredit such claims from jurisprudential perspective.

Statement of the problem

Religion, as the central source of guidance for many people, has played a significant role in shaping human history. Despite all ups and downs religion still plays an important part in human life today as what moves and motivates people. Religion not only shapes human belief but, because of its essential role in human behaviour, it determines believers' conduct to a great extent. Religion can shape the believers' social and collective actions. However, sharing abstract beliefs is not enough to bring about any unification to the actions of believers in the practical realm. For bringing such unification takes a shared language to coordinate the potentially dispersed actions of individuals and give them a purposeful direction. Legal language, because of its definite commands and clear instruction, has the potential to unify actions such that otherwise isolated energies come together to enable a shared goal to be achieved. Legal language is usually used to form the reality rather than merely describe it. Accordingly, legal language is quite normative and stimulating.¹³ Islamic jurisprudence is the legal body of Islam and its language can function as any other legal language does. Muslim militants use the language of Islamic jurisprudence not only to unify their actions but also

¹³ Juergensmeyer, *Terror in the Mind of God*, p. 163.

to promote a self-claimed goal as holy and therefore indisputable.

One of the main religious legal terms that is distorted and misused by militant Muslims quite often to justify their terroristic action, is the term “jihad”. Jihad as a jurisprudential term is used to provide moral justification and, more than that, to sanctify specific acts of violence to the degree that strips such violence of its horror and the moral constraints.¹⁴ While every religion, including Islam, is expected to promote both inward and outward peace among its believers, there are cases where the most horrible crimes are justified and performed in the name of religion. Suicide terrorist attacks, which are the most fatal form of terrorism in our time, are highly associated with religion and in the case of Islam are undertaken in the name of jihad. In this thesis I shall investigate if jihad, as a jurisprudential concept, can and does justify suicide terrorism, or not.

Research questions

The principal research question of this thesis is as follows: Does Usuli Twelver Shia jurisprudence, and specially its law of warfare or jurisprudential jihad, justify suicide terrorist attacks perpetrated by Muslim militants? Subsidiary questions that this research addresses include: With respect to the role of the jurisprudential interpretation of Islam, for which its language is misused by suicide terrorists the most, what is the position of jurisprudential Islam in comparison and contrast to other main interpretations of Islam? Furthermore, what is the position of jihad as warfare in Shia jurisprudence and theology? And, lastly: if jurisprudential jihad does not in fact justify

¹⁴ Juergensmeyer, *ibid.*

suicide terrorism, are there other Islamic religious terms which may be, or are, used for the justification of suicide terrorism?

Research objectives

Since Islamic law, mistakenly often equated with Sharia, has been linked to some of the most inhumane violence committed by Muslim militants, it has become a negative term such that any mention of Sharia *qua* Sharia not only causes distaste and even fear on the part of non-Muslims, it even deters many Muslim scholars from involving themselves in its academic study and any promotion of its awareness in a way that helps in gaining a better understanding of over one-fifth of our planet's population.

In the research undertaken for this thesis I investigate the level of originality of the legal-religious language that promoters and executors of suicide terrorism use to justify their actions. Carrying out suicide terrorism is clearly driven more by political ideology rather than theology; still it does not mean that theology cannot be used by terrorists for justification of such violent tactics. Indeed, suicide terrorists clothe their actions in the symbol system and the legal language of Islam in order to legitimate themselves and grant credibility to their message. They use Islamic legal vocabulary to promote their merits and seize the high ground by labelling their movement Islamic. Taking on the legal language of Islam helps them to use Islam's legitimizing force for their agendas which in turn helps them to gain the Muslim public's material and/or moral support. But such a tactic in no way means that their

actions necessarily accord with Islamic principles, goals, or methods, which Islamic jurisprudence is supposed to serve.¹⁵

I also try to show the destructive effects of validation of the terrorists' religious claims by the media. For the very same reason that, for example, we accurately do not call terrorist casualties "martyrs", even though they claim this for themselves, we should not let them misuse other elements of religion for furthering their inhumane agendas. For example, calling terrorists "jihadists", which means "people of jihad" or *mujahid*, as they claim it themselves, puts them under the banner of jihad which, as will be discussed in the main body of this research, as a non-militaristic concept is a well-established term in Islamic theology. Virtually every interpretation of Islam not only accepts it but allocates a special position for this highly respected religious term. It is not only to the benefit of terrorists to be called respected names such as "people of jihad", it damages the image of the mainstream Muslims. It is important to bear in mind that use of the legal language of Islam should not mislead analysts to conclude that what terrorist groups do is in fact legitimately Islamic. Helping terrorists in their mistaken use of Islamic legal language (by recognising and repeating it through media), can even create a degree of indifference toward extremists among mainstream Muslims. And, it can become problematic if the mainstream feel that their religion is being treated unfairly and that they are being humiliated merely because of being followers of a religion of which a small minority of their co-religionists are committing crimes in the name of the religion. Such a misuse of religion is

¹⁵ John David Payne, Donna Lee Bowen and Joseph Woolstenhulme, 'How Religious is Islamic Religious Terrorism?' In Veronica Ward and Richard Sherlock (eds.) *Religion and Terrorism*, Lexington Books, 2014, p. 125.

not a matter which is a problem to Islam only; it can be seen among other religions as well.

Research Method

While the suicide terrorism I address is a quite recent issue, and the supporting resources that I use for my research, including the Holy Quran, the Sunna (Hadith), and works of the early jurists, are classical texts, a simple reading of these texts is not sufficient for understanding this current phenomenon. Rather, in reading those texts I follow a critical analysis approach in order to find a broader aspect of the text which transcends their contextual origin.

Thesis Structure

Beyond this present introductory chapter, the structure of my thesis is as follows. Part One. The Contemporary Problem of Suicide Terrorism includes Chapter Two in which the definitional elements of terrorism will be clarified so that a comparison between this modern phenomenon and classical jihad becomes possible. In Chapter Three the definition and situation of suicide terrorism will be examined and the latest data discussed. Chapter four focuses on the non-jurisprudential religious justifications of suicide terrorism. Here the relation of two main religious terms, namely Martyrdom and Retaliation, with suicide terrorism is examined and discussed respectively.

Part Two, on Jurisprudence and Jurisprudentialism, locates the place of Islamic jurisprudentialism as the interpretation of Islam which has the highest capability of being misused by extremists for justifying their actions. Mystical Islam, Theo-ethical Islam, and Jurisprudential Islam, will be introduced and

discussed in Chapter Five. Then in Chapter Six ‘jurisprudentialism’ as a modern political movement which is suspected of being associated with extensive violence including terrorism, will be analysed. This leads into Part Three, on Suicide Terrorism and Shia jurisprudence. This Part explains the mechanism of law-making/fatwa-realising in Shia Islam and the basic criteria for a valid religious law. Chapter seven is focused on the main sources of Shia Islamic law or *usul al-fiqh*. The last section discusses the process of law-making, or *ijtihad*, in Shia jurisprudence. Chapter eight is on Shia fiqh as the body of Shia Islamic laws and has a particular focus on ‘jihad’ as a devotional act. In Chapter Nine I analyse the theological position of “jihad” in Shia Islam. Three main understandings will be examined, namely, jihad as warfare, jihad as spiritual struggle, and jihad as a pious way of life in all its aspects. Because of the specific focus of my research, jihad in its jurisprudential meaning as warfare will be closely and critically discussed in this chapter. In Chapter Ten the relation between suicide terrorism and the two, particular (or offensive) and general (or defensive), usages of jurisprudential jihad will be critically investigated. In this chapter the legitimate forms of jihad according to Shia jurisprudence will be compared with the definitional elements of terrorism and the compatibility or inconsistency between different forms of jihad and these elements will be examined. The Conclusion, Chapter Eleven, in addition to summarizing the research, will include some recommendations and points for further research. In the Appendices there can be found various supportive material and a note on my use of translations and transliterations.

Part One

The Contemporary Problem of Suicide Terrorism

Chapter Two

Terrorism: definition and definitional elements

Introduction

Terrorism has become one of the most severe threats to the security of human society in recent history.¹⁶ Terrorists use various types of attacks to achieve their objectives. Such attacks include bombings, hijackings, assaults, arson, firebombing, kidnapping, and armed attacks. However, one tactic which has become popular among terrorist groups is the suicide attack. The fact that suicide terrorist attacks are over 10 times deadlier than all other forms of terrorism¹⁷ reflects the level of seriousness of the threat that this kind of terrorism is causing. Compared to other forms of terrorism, this form of terrorism is more associated with religion.¹⁸ Among militant groups with religious affiliations that apply suicide tactics, statistics show that Muslim militants appear to be engaged in this kind of terrorism much more than others.¹⁹ Again, among Muslim militant groups Shia militants hold a special position in this regard because they are considered to be inventors of suicide tactics in its current form. With respect to the position of Shia militant groups in introducing suicide attacks, and their claim that committing suicide

¹⁶ US Army Training and Doctrine Command, *Handbook* No. 1.03 on Suicide Bombing, 10 August 2006: accessible via (<http://www.fas.org/irp/threat/terrorism/sup3.pdf>)

¹⁷ Robert Pape, *Dying to Win: Strategic Logic of Suicide Terrorism*, Random House, New York, 2006, p. 6.

¹⁸ J. P. Larsson, *Understanding Religious Violence: Thinking Outside the Box on Terrorism*, Ashgate, London, 2004, p. 35

¹⁹ *US Department of State, Country Reports on Terrorism 2011*, accessible via <http://www.state.gov/j/ct/rls/crt/2011/195555.htm>

operations is a part of their religious duty, it is necessary to study Shia Islamic jurisprudence, which is the source that determines the course of the believers' actions with regards to use of violence. Jihad in Shia jurisprudence, wherein the jurisprudentialist Shias' religious duties regarding warfare are determined, and its relation with suicide terrorism is the focus of my attention. To investigate this we need first to clarify what is meant by 'terrorism' and 'suicide terrorism'.

Terrorism: disparity in definition, ambiguity of cases

The popular saying "one man's freedom fighter is another man's terrorist" is a pointer to the extent of discord to be expected when it comes to defining terrorism. Such a discord might have its roots deep into the worldview of any given people: if the world is perceived as peaceful, violent acts appear as terrorism. If the world is thought to be at war, then violent acts may be regarded as preemptive or defensive acts in an ongoing battle and therefore legitimate acts of warfare.²⁰

Despite wide agreement that terrorism, as an evil phenomenon, exists in reality, few can agree on what it is exactly.²¹ Furthermore, terrorism not only does not have an agreed definition but also suffers from fundamentally contradictory definitions. The lack of a truly satisfactory universal definition of terrorism is not because of a lack of interest. Indeed, terrorism is a matter of interest to almost all countries nowadays and the large number of definitions produced by both academic scholars and governments is

²⁰ Mark Juergensmeyer, *Terror in the Mind of God; the Global Rise of Religious Violence*, University of California Press, 2003, p. 9.

²¹ Victoria Ward and Richard Sherlock, *Religion and Terrorism*, Lexington Books, 2014, p. 2.

testimony to this fact. Schmid and Jongman, for instance, identified 109 definitions of terrorism in the 1980s.²² The number of definitions of terrorism has increased since then, especially during the first decade of 21st century as aftermath of shocking terrorist incidents of 9/11, the London bombing, the Paris and Madrid incidents and of course almost daily terrorist incidents in the Middle East following the 2003 invasion of Iraq, which Mark Juergensmeyer refers to as a new way of life in the Middle East.²³

Terrorism and its definition are so important that, unlike other issues, many countries have their own particular definitions. For instance, in the United States of America alone there are several governmental definitions of terrorism (see appendix 4). Arguably one reason why countries choose their own self-interest-based definition of terrorism is that they want to use the combating of terrorism as an instrument for furthering their policies and maximizing their interests.²⁴ In doing so terrorism is often used to define reality in order to place one's own group on a high moral level, condemn the enemy, rally members around a cause, and silence or shape policy debate. In this regard 'terrorist' has become the mantra of our time, dividing the world into two camps of good and evil. Philip Herbst argues that this is the same negative role which once was played by the term "communist".²⁵ The term "terrorist" shuts the door to discussion about or with the stigmatized group, while reinforcing the righteousness of those that apply the label.²⁶ When the

²² See: Alex Schmid and Albert Jongman, *Political terrorism: a research guide to concepts, theories, data bases and literature*, Amsterdam: North Holland publishing company, 1984.

²³ Juergensmeyer, *Terror in the Mind of God*, p. 4.

²⁴ Brian Whitaker, "The definition of terrorism." *The Guardian*, 7 May 2001, Accessible via: <http://www.guardian.co.uk/world/2001/may/07/terrorism>

²⁵ Ward and Sherlock, *Religion and terrorism*, p. 2.

²⁶ *Ibid.*

definers of ‘terrorism’ are governmental entities then they have the power to shape the parameters of the term in a way that affects the status of individuals and groups so designated.²⁷ In such cases the label acts as a political weapon.

This notable inconsistency among existing definitions of terrorism, resulting from self-interests of the definers and also the complexity of the issue, is a challenging problem with practical consequences. Normally when undertaking research it is usual to make use of existing definitions of terms rather than providing new definitions. Sometimes however, for example as with terrorism, it is necessary to delineate the definition which will be applicable to the research. The main purpose of such a definition is to distinguish the defined term from not only distinctly different subjects but also those similar subjects that hold some shared characteristics. This second task is worthy of even more attention and precision. Accordingly, any definition of terrorism must distinguish it from other forms of violence and, more precisely, those sharing some common characteristics with it. Non-politically motivated violence and general warfare, which might share targeted violence against civilians with terrorism, for example, must be differentiated by any valid definition of terrorism. Before attending to the issue of a definition of terrorism applicable to the present research project, it is appropriate to briefly review the history of the term.

Terrorism: short history of the term

Terrorism, which comes from the Latin *terrere*, “to cause to tremble”, refers to an action that is meant to terrify.²⁸ The modern concept of terrorism is

²⁷ Ibid, p. 3.

²⁸ Juergensmeyer, *Terror in the Mind of God*, p. 5.

usually said to have emerged in the aftermath of the French Revolution when it was used to describe the violent suppression of the population by the state; terrorism was the instrument the state used against its own citizens.²⁹ The first recorded use of ‘terrorism’ and ‘terrorist’ was in 1795, relating to the Reign of Terror instituted by the French government. Since the Jacobins, who led the government at the time, were also revolutionaries ‘terrorism’ gradually came to be applied to violent revolutionary activity in general. However the use of ‘terrorism’ in an anti-government context is not recorded until 1866.³⁰

By 1937, the League of Nations had turned the meaning around, defining terrorism as “criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons or the general public.”³¹ This definition implies that terrorism can be perpetrated solely by non-state actors. The exclusion of states should not be that surprising given that, despite its title, it was a league of “states” that formulated the definition. The exclusion of states from the application of the concept of terrorism remains fundamentally unchanged among governmental definitions of terrorism even until today. This is because the majority of definitions in use for legal and official purposes are drafted by agencies directly associated with governments, and they systematically exclude governments from the definition. Despite the fact that the currently dominant definitions of terrorism, practiced in legal and political procedures, are biased still they cannot be neglected when studying terrorism. Although I remain critical of

²⁹ Ibid, p. 5.

³⁰ Ward and Sherlock, *Religion and Terrorism*, p. 3.

³¹ Ibid.

the deficiencies of such biased official definitions of terrorism and rather support academic unbiased definitions, still for practical purposes I need to refer to these official ones. This is why in this study, I also exclude governments from the definition of terrorism. To leave more space for my own definition of terrorism, which is arrived at exclusively for this study, I have put the most popular official definitions of terrorism in Appendix No. 4, to be referred for the purpose of comparison or further information.

Toward definition of terrorism

As indicated above, definitions of terrorism vary not only from one country to another but sometimes from one institution to another within the same country, and even from one time period to another time in the same country or organization to meet specific needs or interests. In the absence of an agreed definition of terrorism, and to avoid the challenge of choosing one definition of terrorism and neglecting another, which might have useful and clarifying elements in it, I shall take a combined approach in this study. Such an approach enables a consistent focus on the main elements available in different definitions of terrorism that more effectively help to differentiate terrorism as one type of political violence from others.

From the 109 definitions of terrorism in the period between 1936, one year before the first time terrorism was defined by the League of Nations, to 1981, one year before introduction of suicide tactics, over half the definitions (51%) contained the following three elements: 1- violence against civilians, 2- spread of fear, 3- political goals.³² No doubt after new developments

³² Alex Schmid and Albert Jongman, *op cit.*

following the September 11, 2001 terrorist incidents, there have been further modifications in the definition of terrorism; but these three elements still hold an important position in many new definitions as well. Alex Schmid in his most recent attempt to achieve an academic consensus over the definition of terrorism offered a new definition of terrorism. This definition, which was based on collected opinions of some of the most recognized experts of the field through special questionnaires, again included the same three elements of “civilians as targets”, “spread of fear as means”, and “affecting the targeted population politically” as goals when indicating the distinguishing elements between terrorism and other forms of political violence. Schmid categorised terrorism as: “fear-generating” political violence targeting mainly “civilians and non-combatants” to affect “various audiences and conflict parties”.³³

However, in answer to the question whether the above list contains all the elements necessary for a definition that may be agreed to by all, the answer is still “no”. This is more because of a clash of interests rather than the unreliability of such a definition. The reason why there is no universally accepted definition of terrorism is not because of a lack of ability among experts to provide a comprehensive definition but because of the general unwillingness of various governments to commit themselves to any such concise requirements when such a definition might tie their hands in one way or another in the future.³⁴

The fact that we cannot find an agreed definition for terrorism should not stop us from clarifying our understanding of the concept and to use it as a

³³ Alex P. Schmid, *The Routledge handbook of terrorism research*, Routledge, 2011, p. 86.

³⁴ Ward and Sherlock, *Religion and Terrorism*, p. 3.

framework for our study, because without such a framework it is not possible to conduct any further meaningful discussion. As a practical approach, and to avoid possible endless debates over definition of terrorism, I focus on the above mentioned three main elements which are more common in most of definitions of terrorism and add another fourth element to them which I have borrowed it from more official definitions of terrorism. Although the fourth element is not as common as the other three in various definitions of terrorism, nevertheless, from practical point of view, it is as important if not more important. The fourth definitional element focuses on the identity of the executors of terrorism and excludes governments in this regard. Based on this we define terrorism as ‘the use of violence by non-state actors against civilians to spread fear for political objectives’.

Definitional elements of terrorism

I shall now endeavour to explain each of the four main definitional elements of terrorism and how these elements distinguish terrorism from other forms of violence. These constituting elements of terrorism are as follows:

- 1- Executers
- 2- Targets
- 3- Means
- 4- Goals

1. Executers

In my working definition of terrorism, executers of terrorism are non-state actors therefore this definition excludes the use of violence by governments. As such even the use of disproportionate violence by governments is not included in our definition of terrorism because such use is usually covered by

concepts such as ‘law enforcement’ and ‘warfare’, or in the most serious cases as ‘crimes against humanity’. Nevertheless the use of violence by clandestine agents acting on behalf of government or political forces is considered as terrorism. Such agents who are in fact state actors are counted as non-state actors in this case. This is because if their identity as state actors is revealed then they are not clandestine anymore. Thus as long as the clandestine agents are able to hide their identity during the incident, and their act is done in the name of non-state actors, their use of violence against civilians is considered to be terrorism. As we will see below, the identity of executors of violence is highly important.

2. Targets

As noted above, the definition of terrorism is supposed to distinguish between three main forms of armed violence namely; 1- non-political violence, 2- terrorism, and 3- warfare. In general this means that armed attacks with political objectives are deemed warfare in the case of targeting soldiers, and when against non-combatant it is terrorism. However the dividing lines quickly become blurred – especially when it comes to defining who exactly is a non-combatant and who is a combatant. For example the US State Department regards attacks against ‘non-combatant targets’ as terrorism³⁵ but that ‘non-combatants’ includes both civilians and military personnel who are unarmed or off duty at the time. It is not only policy circles that include attacks on military personnel by non-state actors as terrorism but some scholars go even further and consider attacks by non-state insurgents against

³⁵ Office of the Coordinator for Counterterrorism, *Patterns of Global Terrorism 1996*, US Department of State Publication 10433, Washington, DC: State Dept., April 1997, p. vi.

military targets terrorism as well.³⁶ When there is no agreement over the definition of targets of terrorism among governments and academics, then international law does not help that much in providing an exact definition because it provides only a negative description when defining targets of terrorism: “Someone who is not a member of armed forces, who does not carry a weapon, and who does not take part in hostilities.”³⁷

In Shia jurisprudence civilians – meaning those illegitimate targets of armed violence – are more clearly distinguished. As will be discussed shortly, according to the Shia law of warfare all except those males who are present on the battlefield and are capable of fighting and have not announced their detachment from war, are considered civilians. An example of detachment from war in Shia jurisprudence is the clergy who have devoted their life to their religion. That being the case the clergy, even if upon the battlefield – of course, for reasons other than fighting – are considered civilians. According to Shia fiqh, carrying a weapon does not exclude one from being a civilian because, in the absence of professional army and police at the time of formation of fiqh, members of a society themselves were supposed to do the job of army personnel. As such, taking part in hostilities was the main criterion for separating civilian males who were capable of fighting from their non-civilian counterparts. In addition to taking part in hostilities (more specifically attending the battlefield) there were other elements which were taken into account when distinguishing civilians from non-civilians. Parameters of age, health, and gender were among such elements. The

³⁶ John David Payne, Donna Lee Bowen and Joseph Woolstenhulme, ‘How Religious is Islamic Religious Terrorism?’ In Ward and Sherlock (eds.), *Religion and Terrorism*, p. 122.

³⁷ Ward and Sherlock, *Religion and Terrorism*, p. 4.

elderly, women, children, and the ill, defined as immune groups by Islamic law, were considered civilians even if were holding arm and attending the battlefield. In addition to these groups everyone outside the battlefield was an illegitimate target because military jihad was limited to the battlefield.³⁸ I use the term ‘civilian’, rather than ‘non-combatants’³⁹, with respect to the above explanation, as referring to targets of terrorism when comparing armed jihad with terrorism. Due to an expansion of the concept of battlefield, as result of the nature of new weapons, it is difficult to determine the exact borders of what constitutes a ‘battlefield’ these days. That being the case, all armed male personnel of foreign countries’ armies – which are in charge of fighting and not armed police, for example – who are at war with a Muslim country are considered combatants. Such personnel are not seen as targets of terrorism. Non-members of armies who have access to weapons are seen civilians. This is because, firstly; capability for fighting – in its professional sense – requires thorough military training and they are military personnel who have such capabilities. Secondly; the hostile intention is only expandable to military personnel of the fighting army rather than non-military armed citizens. This distinction between untrained armed citizens and military personnel becomes crucial when countries like the US – in which keeping weapons by citizens is legal – are involved.

3. Means

The spread of fear is an axiomatic definitional element of terrorism. The element of ‘terrorization’ which lies in the literal meaning of the word

³⁸ Mortaza Motahari, *Jihad*, Sadra Publication, 1983.

³⁹ It is because according to the Shia jurisprudence female or underage combatants are still considered ‘civilians’ and immune from being intentionally targeted in the battlefield.

‘terrorism’ is so obvious as to need no further explanation. Despite this, some definitions neglect the element of ‘terrorization’. For example the United States Federal Bureau of Investigation (FBI) defines terrorism in just such a way when it says: “The unlawful use of force or violence against persons or property ...”⁴⁰ for in this definition as we see that attack on properties is considered as terrorism as well, even though property, unlike human beings, cannot be terrorized as such. In our definition of terrorism ‘spread of fear’ among humans is a key factor.

4. Goals (objectives)

Terrorism primarily concerns political objectives although, as the United Nations General Assembly Resolution 51/210 (1996) indicates, it might have political, philosophical, ideological, racial, ethnic, and/or religious motivations behind it. Regardless of motivations, the objective of terrorism is political because it is about affecting political institutions. The United Nations Security Council Resolution 1566 (2004) clarifies this when defining terrorism as a criminal act: “... to compel a government or an international organization to do or to abstain from doing any act”. Accordingly, based on my definition of terrorism, other forms of violence such as hooliganism which lack political goals, and despite the use of violence against civilians, are excluded. With this understanding of terrorism in mind, I turn now to defining suicide version of terrorism as the subject of focus in this research.

⁴⁰ <http://www.azdema.gov/museum/famousbattles/pdf/Terrorism%20Definitions%20072809.pdf>

Chapter Three

Suicide attacks: facts and figures

Introduction

On October 23, 1983 at around 6:20am, a yellow Mercedes Benz truck drove to Beirut International airport where the US Marines had set up their local headquarters. The hijacked truck, carrying the equivalent of 5.5 tons of the explosive TNT, passed between two sentry posts, crashed through a gate and drove into the lobby of the Marine headquarters. By the time the two sentries were able to engage, the truck was already inside the building's entrance and the driver had detonated his deadly cargo. The massive explosion, which was rated as the biggest non-nuclear explosion since World War II by the FBI, killed 241 service members, including 220 Marines. The incident was the marines' biggest loss of life in a single day since the World War II US-Japan battle of Iwo Jima.⁴¹ Elsewhere in the city, French paratroopers, not realizing a second suicide truck bomber had driven into their basement, went to their barracks' balconies to see the mushroom cloud at the airport. Two minutes later the second suicide bomber detonated his truck, destroying the building and killing 58. It was the worst military loss for France since the end of the Algerian War in 1962.⁴² The same day, the BBC reported the two suicide bombers, both of whom died in the attack and were named as Abu Mazen, 26, and Abu Sijaan, 24, as members of a previously unknown Shia group called the Free Islamic

⁴¹ Rick Hampson, "25 years later, bombing in Beirut still resonates" *USA TODAY*: accessible via http://www.usatoday.com/news/military/2008-10-15-beirut-barracks_N.htm

⁴² Ibid.

Revolutionary Movement. The group was thought to be composed of Lebanese Shia Muslims and was part of an extremist faction of the Amal militia.⁴³

The Beirut suicide bombings drove the foreign military forces out of Lebanon. The surprising effectiveness of the Lebanese Shia groups' suicide tactics in forcing the withdrawal of foreign forces from Lebanon, impressed many nationalist, leftist, and religious militant groups around the globe. The first group to show interest in adopting the same suicide tactics was the Tamil separatist Marxist-Leninist group of the Tamil Tigers (LTTE). This leftist secular group formed a suicide unit named "the Black Panthers". Between July 1987 and February 2000, the LTTE executed around 168 suicide attacks in Sri Lanka and India killing and wounding thousands of people. The group is the only organization to have succeeded in assassinating two heads of states. The Prime Minister of India, Rajiv Gandhi, was killed in May 1991 by a female suicide bomber and Sri Lanka President, Ranasinghe Premadasa, was killed in 1993 by a male suicide bomber.⁴⁴ From 1993 on, both nationalist and religious Palestinian groups started showing interest in using suicide attacks against Israel.⁴⁵ In 1995 two Egyptian religious groups – the Gama`a al-Islamiya and Egyptian Islamic Jihad – joined the club of suicide bombers as well.⁴⁶ The Kurdish nationalist group, the Kurdistan Workers' Party (PKK), began to use suicide attacks to boost the morale of its fighters after military setbacks in southeast Turkey, which had a negative impact on the group in 1996.⁴⁷

⁴³ http://news.bbc.co.uk/onthisday/hi/dates/stories/october/23/newsid_2489000/2489117.stm

⁴⁴ US Army Training and Doctrine Command, *Handbook No. 1.03 on Suicide Bombing*.

⁴⁵ Chicago project on security and terrorism, accessible via:
http://cpostdata.uchicago.edu/search_results_new.php

⁴⁶ Ibid.

⁴⁷ U.S. Army Handbook on Suicide Terrorism

Unlike other groups, which started their suicide operations at national or regional levels, a Muslim militant group became the first to employ suicide attacks at the global level. Al-Qaeda joined the camp of suicide bombers by executing such attacks on the U.S. Embassies in Nairobi and Dar-e-Salaam in 1998 and the USS Cole in Aden Harbour in 2000, followed by attacking the World Trade Centre and the Pentagon in September 11th 2001. The 9/11 terrorist attacks were so shocking that, for some, the attackers and the ideology behind them replaced communism as the USA's chief ideological adversary.⁴⁸ Suicide bombing as an effective, inexpensive and flexible weapon was a revolutionary military innovation which in the age of high-tech warfare, to some extent, levels the technological difference between highly developed states and poorly equipped non-state militant actors. It was the main reason behind the rapid growth of this newly introduced form of violence.

Suicide attacks: Definition and brief history

Suicide attacks, perhaps surprisingly, have multiple definitions since they are a phenomenon with diverse factors, forms, and typologically different goals, targets, and perpetrators. Here I will mention only two of these differing definitions as they cover the most essential elements. Suicide attacks are defined by the Congressional Research Service of the Library of Congress of the United States as: “Events where the ‘success’ of the operation cannot occur without the ‘death of the perpetrator’, and he or she is apparently aware of this in advance.”⁴⁹ By comparison, the Australian Flinders University database on

⁴⁸ Rick Hampson, USA TODAY, “25 years later, bombing in Beirut still resonates” 15-10-2008, accessible via http://www.usatoday.com/news/military/2008-10-15-beirut-barracks_N.htm

⁴⁹ US Army Training and Command, *Handbook No. 1.03 on Suicide Bombing*.

suicide attacks defines such assaults as: “The targeted use of self-destructing humans against a perceived enemy for political ends”.⁵⁰

These two definitions include elements that are helpful in distinguishing between suicide attacks and other kinds of operations. Regardless of the definition used, the common element of suicide attacks is the fact that they will only succeed if the attacker kills himself/herself. Therefore the death of the executer is an essential part of operation. This is different from what is often described as suicidal attack. A suicidal attack is a high-risk operation where the death of the attacker is not necessarily a part of the operation and the perpetrator does not need to kill himself/herself, although his/her chance of survival might be very slim. The direct and indivisible relationship between the success of the mission and death of the attacker is the main difference between suicide attacks and other types of operations in which the level of risk is very high.⁵¹ Loyalty and honour, even unto death, has always been considered a strong aspect of romantic conceptualisations of a combatant’s courage and commitment to his beliefs. Those who were ready to sacrifice their lives in service to their particular collective are considered heroes by those same societies. Suicidal attacks, as exemplary signs of courage, have been employed in warfare since ancient times because the ultimate bravery and heroism lie in ‘seeking out’ death.⁵² Among early such attacks recorded are those of the Jewish zealots in

⁵⁰ Riaz Hassan, Global Rise of Suicide Terrorism: An Overview, *Asian Journal of Social Sciences*, (2008) 271–291. Accessible via: www.brill.nl/ajss

⁵¹ US Army Training and Doctrine Command, *Handbook No. 1.03 on Suicide Bombing*.

⁵² Reuven Paz, Suicide or martyrdom: the roots of anger that motivated this volcano, in Rachid El Houdaigui, The elements of a complex analytical approach to suicidal jihadism in Tatyana Dronzina and Rachid El Houdaigui (eds.), *Contemporary suicide terrorism: origins, trends and ways of tackling it*, NATO Science for peace and security studies, Vol. 101, IOS Press, 2012, p. 32.

the first century CE. They would sometimes fight the Roman occupation by walking up to a Roman soldier in a square, pulling out a knife and killing the soldier knowing that there were other Roman soldiers standing right by who would immediately execute the zealot.⁵³

Another group in history, famous for the use of suicidal attacks, was the Ismaili Hashasheen, also known as the Nazari Ismailis who operated in the eleventh through to the thirteenth centuries of the Common Era. This is where the word ‘assassination’ comes from. However, their propensity to assassinate enemy leaders was very much on the basis of suicidal attacks. Assassins used to kill their victims, usually prominent officials, in public places where there were many witnesses to assure publicity for their acts. No doubt this kind of operation would often mean the loss of the lives of the attackers. Modern forms of assassination have tended to be targeted killing of prominent targets by anonymous attackers whose intention is to remain anonymous and to survive.⁵⁴

Apart from suicidal attacks there is a whole history of the use of suicide in times of war to avoid capture, to preserve intelligence information, or to avoid further suffering at the hands of capturing forces⁵⁵ which also falls outside our definition. Modern suicide attacks, in the general sense of the term, began with kamikaze operations in October 1944, when the Japanese military realized it would be almost impossible to prevent the US army from invading the Japanese home islands.⁵⁶ Conventional measures were seen to be failing to avoid the

⁵³ (<http://www.britannica.com/EBchecked/topic/656131/Zealot>)

⁵⁴ Henry Dodd, “A short history of suicide bombing.” AOAV, accessible via: <https://aoav.org.uk/2013/a-short-history-of-suicide-bombings/>

⁵⁵ Ibid.

⁵⁶ Henry Dodd, “A short history of suicide bombing.” AOAV, accessible via: <https://aoav.org.uk/2013/a-short-history-of-suicide-bombings/>

defeat. Therefore, the Empire of Japan started to mount suicide attacks using aircrafts, speedboats, and submarines against allied naval vessels. The Tokkotai (meaning ‘special attack unit’ and popularly referred to as Kamikaze) consisted of planes and boats loaded with bombs and instructed to crash into allied naval targets.⁵⁷ In total around 3,000 suicide attacks were carried out by the Japanese before the end of the war.⁵⁸ While both the number of Kamikaze operations carried out and their fatalities were quite significant, Kamikaze has not been considered a significant inspiration for more recent suicide attacks. Despite significant number of both inter-state and civil wars which happened after the US-Japan war, Kamikaze did not inspire other actors to copy it in the immediate post US-Japan war years.⁵⁹

Suicide bombing, as a strategy of non-state actors suffering from a deficit of conventional military capabilities, fighting powerful state actors, emerged in Lebanon in the early 1980s in response to Israel's invasion of Lebanon. The fourth suicide attack carried out by Lebanese Shia groups, the famous suicide truck bombing against the US Marine barracks in Beirut in 1983, is now believed to have been the main inspiration for all other militant groups who subsequently adopted the tactic. The attack was not only significant in the number of deaths it produced, but it was successful in producing political results judged favourable to the group employing it. The powerful state actors (the USA and France) were forced to retreat.⁶⁰

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ US Army Training and Doctrine Command, *Handbook No. 1.03 on Suicide Bombing*.

Suicide Attack: the Weapon of Choice

One century after the invention of dynamite, humans had found a new way to kill each other using explosives. This time to kill themselves to defeat their enemy. Measured by the criterion of cost effectiveness, this new form of killing, namely suicide tactic, has no equal among all other forms of combat operations, except for the use of weapons of mass destruction.⁶¹ The rapid spread of suicide attacks since the 1980s indicates that suicide operation was seen as a viable and effective tactic. What made suicide attacks, chosen rationally from among a menu of policy options, so attractive for so many groups of activists? To answer this question, it is necessary to look at suicide attacks from four main perspectives: technical, financial, psychological, and political.

From a technical perspective, the suicide attack is unique. Since almost all of those groups which run suicide operations suffer from a lack of access to high technology weapons, suicide attacks using humans as the weapon levels the technological playing field to a considerable degree. No more adaptable, opportunistic weapon system has yet been introduced to the battlefield than the human person. A suicide bomber, without any need to receive long term training with expensive high-tech weapons, can hit the target as exactly, or more effectively, than many expensive high-tech weapons.⁶² The suicide bomber has a huge advantage over other weapons: he or she can make

⁶¹ Alexander Khranchikhin, "Suicide terrorism as the most effective method of terrorism: military and migratory aspects" in Tatyana and El Houdaigui (eds.), *Contemporary suicide terrorism*, p. 10.

⁶² Ibid.

instantaneous contingent changes to the operation to maximize the chance of success.

Defending against suicide attacks is also much more difficult by comparison to other weapons. A suicide bomber might look like many things, but not a bomb as such. As a matter of fact human 'smart bombs' are able to hide their reality to the last moment and, since they are difficult to identify, they are difficult to stop. Any preemptive actions to avoid possible suicide attacks could harm innocent people and would weaken the public standing of the defending party. It is clear that increased measures to combat suicide attacks could in some circumstances also increase public displeasure, so offering a win-win outcome for the militant group using suicide tactics.

Suicide operations are relatively less complicated compared to other kinds of operations. It is usually the 'escape plan' which is the most difficult and complicated part of an operation, especially when it is conducted in an area controlled by hostile forces. Any attempt to hide the operation may be successful until it is executed, but once carried out the counterattacking forces will be swiftly mobilized, making escape from the scene difficult. Suicide attacks need no escape plan and can be more effective in high security areas when compared to other types of operation. Suicide operations cause minimal security risks to the group carrying them out. Since the suicide bomber who executes the attack is killed as a result of the operation, there is little fear by the affiliating group that he/she will be caught and interrogated by security forces.⁶³

⁶³ US Army Training and Doctrine Command, *Handbook No. 1.03 on Suicide Bombing*.

From a financial perspective, suicide attacks are notably cost effective. For example, the suicide attack of October 1983 against US marines in Beirut, which had significant local and international consequences, cost no more than a few thousand dollars. Since the truck which was used for the operation was a stolen one it didn't cost anything, and the only money spent went on explosive materials and devices. The results which were achieved by this single suicide operation could not have been expected to have been gained by a several times more costly operation of another type.⁶⁴ The reality is that ordinary suicide operations cost even less. According to Bruce Hoffman's estimation, a suicide attack can cost as little as US \$150.⁶⁵ Even complicated operations which might cost more are still considered to be worth the investment because of their effectiveness. The 9/11 terrorist attacks, which were quite complicated and more expensive than other suicide operations, are estimated to have cost not more than US \$50,000. The attacks resulted in damage costing many orders of magnitude higher to the United States and the global economy.⁶⁶

The negative psychological effects of suicide attacks on the enemy are often the most attractive outcome for the perpetrating groups. Suicide attacks are much more effective in spreading terror and a sense of helplessness among the targeted society than other operations, and there can be no doubt that this is usually one of the most important goals of terrorists. It should be noted also that attracting public sympathy through 'romanticising' the perpetrator – for

⁶⁴ Ibid.

⁶⁵ Bruce Hoffman, *Inside Terrorism* (2nd Edition) Publisher: Columbia University Press, New York, NY, 2006, pp.132-3.

⁶⁶ Bruce Hoffman, "The Logic of Suicide Terrorism," *Atlantic Monthly* vol. 295, No. 1 (June 2003): 2.

accessible via: http://www.rand.org/pubs/reprints/2005/RAND_RP1187.pdf

example, as a martyr – is a major advantage of suicide operations for the perpetrating groups as well. Although those groups engaged in suicide attacks usually prefer to keep their secrets tight and therefore do not broadcast much information about their operations, if they do decide to engage in propaganda then they prefer to broadcast faces of innocent looking, young, and attractive suicide bombers. For instance, usually suicide bombers remain anonymous, but the operation carried out by an 18 years old Palestinian female suicide bomber, Ayat al-Akhras, on March 2002 gained such widespread international attention that the US president of the time, George W. Bush also talked about it.⁶⁷

Self-sacrifice of life is often considered to be a sign of the highest commitment to a cause. Even if the suicide operation does not achieve its initial goals, it may still help increase public support because the narrative of the courage of the attacker and his dedication to the cause can be publicized, guaranteeing some psychological success. According to the US Army handbook on suicide bombings, such attacks often result in large donations to support the cause of the group.

...a Saudi telethon raised more than \$100 million for the Palestinians after an 18-year-old Palestinian girl [Ayat al-Akhras] conducted a suicide bombing of a supermarket. Support from outside of the country is also a common result of suicide attacks. One estimate indicates that the Tamil Tigers have received annual support of

⁶⁷ Joshua Hammer, *NEWSWEEK* (15 April 2002), Accessible via: <http://www.robincmiller.com/articles/a15.htm>

approximately \$150 million from 800,000 Tamils living throughout the world.⁶⁸

The political results of suicide attacks are no less important than any other aspects of such operations. Influencing public opinion is very important for militant groups. Since media coverage of a suicide attack is almost guaranteed, groups related to these kinds of operation become quite famous and the public becomes interested to know about their cause and message. This may serve to recruit more volunteers to conduct further suicide attacks. Even if the suicide bomber is stopped by a security force from reaching the planned target, he/she can still carry out an attack and cause some form of damage and accordingly gain media coverage. As such the success of the suicide mission in publicizing the group's message is almost guaranteed once the attacker departs for the operation.⁶⁹ For all the above mentioned reasons, the power of suicide attacks is so extensive that it has been considered as the most effective weapon after weapons of mass destruction.⁷⁰

Suicide attacks in the mirror of statistics

After being introduced in the early 1980s in Lebanon, the frequency of suicide attacks has increased dramatically from an average of fewer than five per year during 1980s to over 70 times greater in the second decade of twenty-first century. Recent tensions in Syria, Yemen, and Iraq has contributed significantly in sharp increase in number of suicide attacks since 2011. In 2014

⁶⁸ US Army Training and Doctrine Command, *Handbook No. 1.03 on Suicide Bombing*.

⁶⁹ Bruce Hoffman, *The Logic of Suicide Terrorism*, op cit.

⁷⁰ Dan Eggen and Scott Wilson, "Suicide Bombs Potent Tools of Terrorists", *Washington Post* (17 July 2005), accessible via

(http://www.washingtonpost.com/wp_dyn/content/article/2005/07/16/AR2005071601363.html)

the number of suicide attacks got close to 600.⁷¹ The huge increase in the number of suicide attacks is not the only matter of concern. The reality is that what makes these kind of incidents especially damaging is the extremely high number of casualties they produce.

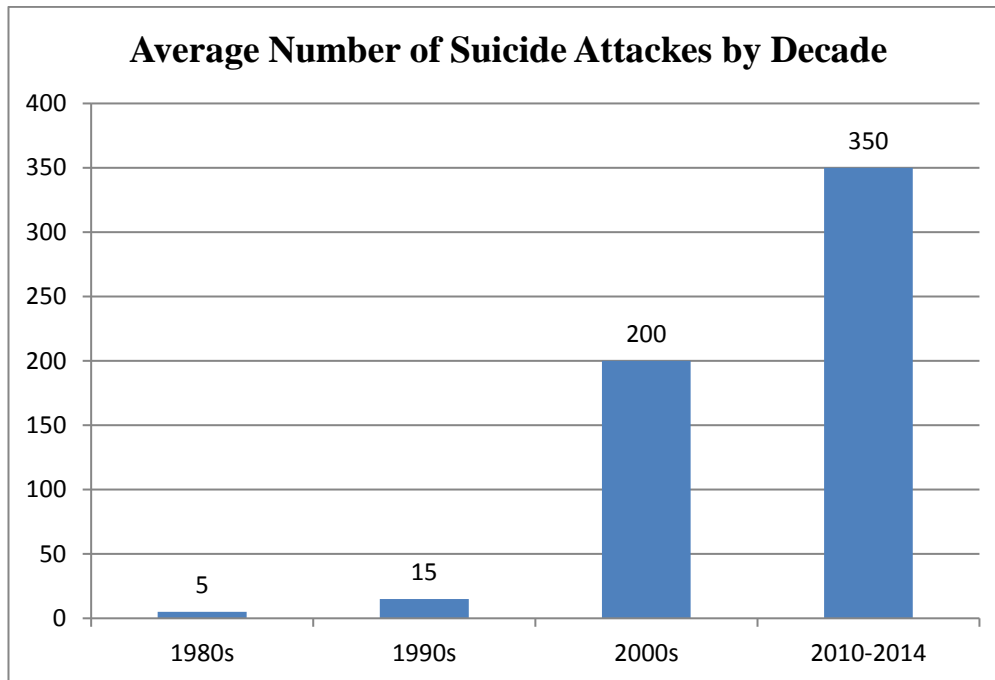


Figure 1 Average Number of suicide attacks by decade. Sources: UNAMA⁷², US NCTC⁷³, Lancet⁷⁴, Pape⁷⁵, INSS⁷⁶

⁷¹ Yoram Schweitzer, Ariel Levin and Einav Yogev, *Suicide Attacks in 2014: The Global Picture*, INSS Insight No. 653, January 6, 2015. Accessible via: <http://www.inss.org.il/?id=4538&articleid=8514>

⁷² http://unama.unmissions.org/Portals/UNAMA/human%20rights/UNAMA_09february-Annual%20Report_PoC%202008_FINAL_11Feb09.pdf

⁷³ The U.S. National Counterterrorism Center 2011 *Report on Terrorism* accessible via http://www.nctc.gov/docs/2011_NCTC_Annual_Report_Final.pdf

⁷⁴ Hicks MH, Dardagan H, Bagnall PM, Spagat M, Sloboda JA., Casualties in civilians and coalition soldiers from suicide bombings in Iraq, 2003-10, *The Lancet*, Volume 378, Issue 9794, 3 September 2011. Pp. 906 - 914,

⁷⁵ Robert Pape, *Dying to Win*, pp. 3-8.

⁷⁶ Yoram Schweitzer, Einav Yogev and Ariel Levin, *The annual report on terrorism and low-intensity conflict*, Institute for National Security Studies, published as “Number of suicide bombings around world surged 94% in 2014 amid rise of ISIS,” in *Haaretz*, Tuesday, January 06, 2015. Accessible via: <http://www.haaretz.com/news/diplomacy-defense/.premium-1.635193>

According to Robert Pape's findings, while suicide attacks constituted only three percent of all non-state militants groups' attacks for political objectives from 1980 through 2003, they accounted for 48 percent of all fatalities, making the average suicide attack fifteen times deadlier than other forms of attack.⁷⁷

Although this ratio has since decreased slightly still it is significantly high. The Australian Flinders University Data Base for Suicide Bombings shows that until 2006 this ratio remained well over 30 percent when the portion of suicide attacks of all incidents rose to four percent.⁷⁸ The 2011 Country Reports on Terrorism released by the United States Department of State indicates that over 10,000 terrorist attacks occurred in 2011, claiming nearly 45,000 victims in 70 countries including over 12,500 deaths. Of these, suicide attacks accounted for just 2.7 percent of such incidents, but caused 21 percent of all terrorism-related fatalities, a fact that underscores their extreme lethality.⁷⁹

Although all four corners of the world have witnessed suicide attacks, four countries – Israel/Palestine, Iraq, Afghanistan, and Pakistan – have experienced around 90 percent of these incidents. Each country's share is shown below in graph form.

⁷⁷ Robert Pape, *Dying to Win*, p. 6.

⁷⁸ Riaz Hassan, What Motivates the Suicide Bombers? Study of a comprehensive database gives a surprising answer, YaleGlobal, 3 September 2009 accessible via <http://yaleglobal.yale.edu/content/what-motivates-suicide-bombers-0> accessed 24 August 2012

⁷⁹ US Department of State *Country Reports on Terrorism 2011*, accessible via <http://www.state.gov/j/ct/rls/crt/2011/195555.htm>

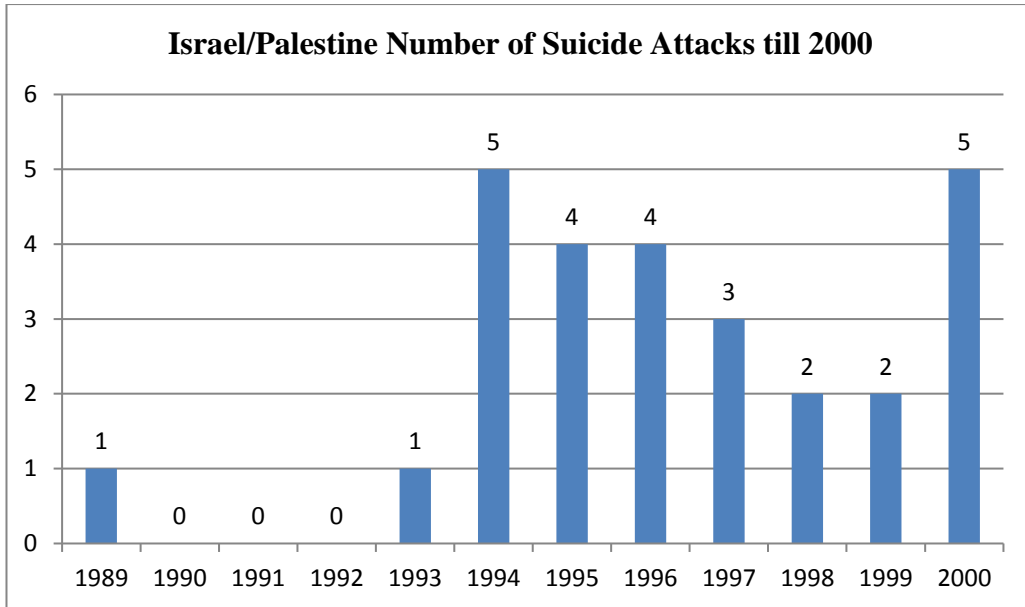


Figure 2: Israel/Palestine number of suicide attacks till year 2000, Source: Shabak.⁸⁰

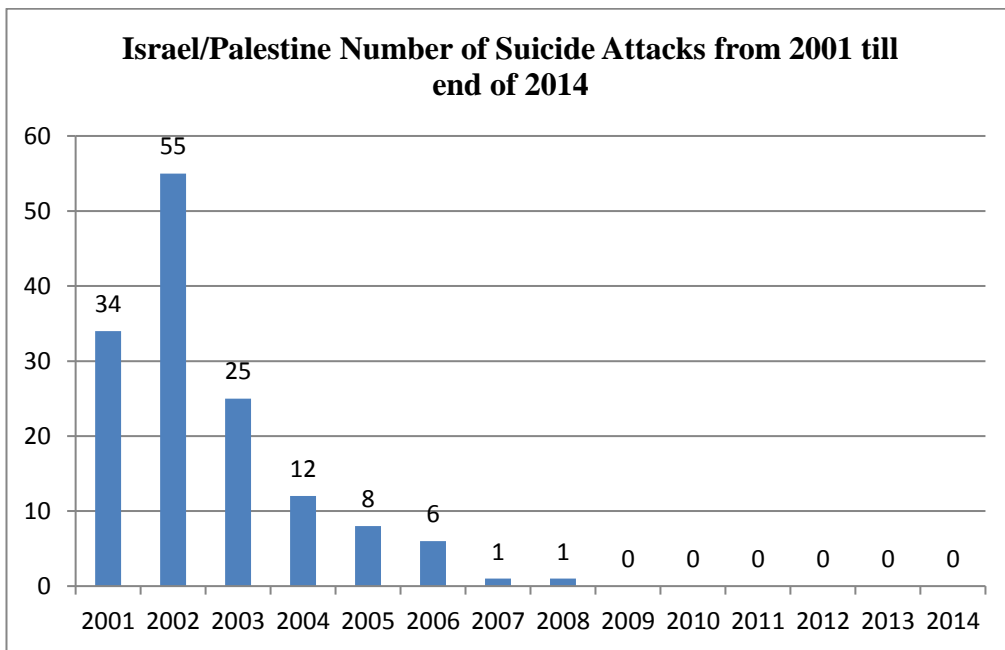


Figure 3: Israel/Palestine number of suicide attacks from 2001 until end of 2014, Source: Shabak and NISS.⁸¹

⁸⁰ <http://www.shabak.gov.il/SiteCollectionImages/english/TerrorInfo/decade/SuicideAttacks.pdf>
 Note: in the year 2000, four incidents occurred after 29/9/2000 when the Second Intifada began.

⁸¹ Number of suicide bombings around world surged 94% in 2014 amid rise of ISIS, Haaretz, Tuesday, January 06, 2015 Tevet 15, 5775. Accessible via:
<http://www.haaretz.com/news/diplomacy-defense/premium-1.635193>

Also:

During first decade of 21 century 142 suicide attacks took place in Israel and Occupied territories killing 516 people. These constitute almost half (43.3 percent) of all the 1178 fatalities during this period.⁸² However, more recently a new form of suicidal attacks have been introduced by Palestinians and Arab Israelis. The efficiency of the Israeli security forces in blocking the movement of explosive ordnance has resulted in spread of unusual ways of mounting attacks such as the application of cold weapons and also the use of cars in the execution of suicidal attacks.

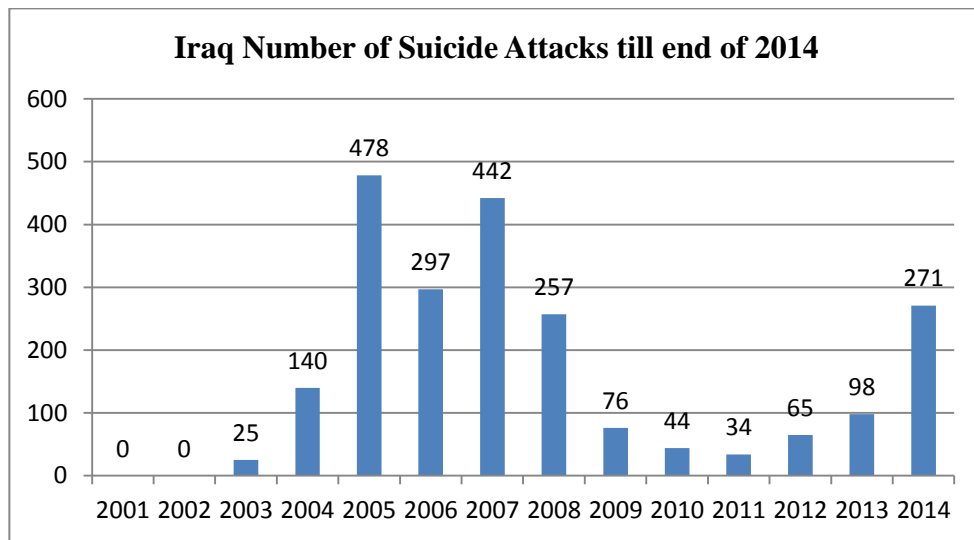


Figure 4 Iraq number of suicide attacks till end of 2014

Source: Iraq Bodycount, US State Department, Dan Eggen & Scott Wilson, NISS⁸³

<http://www.shabak.gov.il/SiteCollectionImages/english/TerrorInfo/decade/SuicideAttacks.pdf>

And also:

The United States Department of State, *Statistical Information on Terrorism in 2012*, May 2013. Accessible via: <http://www.state.gov/documents/organization/210288.pdf>.

⁸² Number of suicide bombings around world surged 94% in 2014 amid rise of ISIS, *Haaretz*, Tuesday, January 06, 2015 Tevet 15, 5775. Accessible via: <http://www.haaretz.com/news/diplomacy-defense/.premium-1.635193>

⁸³ Number of suicide bombings around world surged 94% in 2014 amid rise of ISIS, *Haaretz*, Tuesday, January 06, 2015 Tevet 15, 5775. Accessible via: <http://www.haaretz.com/news/diplomacy-defense/.premium-1.635193>

Also:

Yotam Rosner, Einav Yogev and Yoram Schweitzer, *A Report on Suicide Bombings in 2013*, INSS Insight No. 507, January 14, 2014. Accessible via: <http://www.inss.org.il/index.aspx?id=4538&articleid=6408>

In only one month, May 2005, an estimated 90 suicide bombings were carried out in Iraq which means an average of three incidents per single day.⁸⁴ It is important to note that after the US army started withdrawing from Iraqi cities, on June 30, 2009, the number of suicide attacks in Iraq decreased significantly but, under the influence of unrest in Syria it started increasing again.

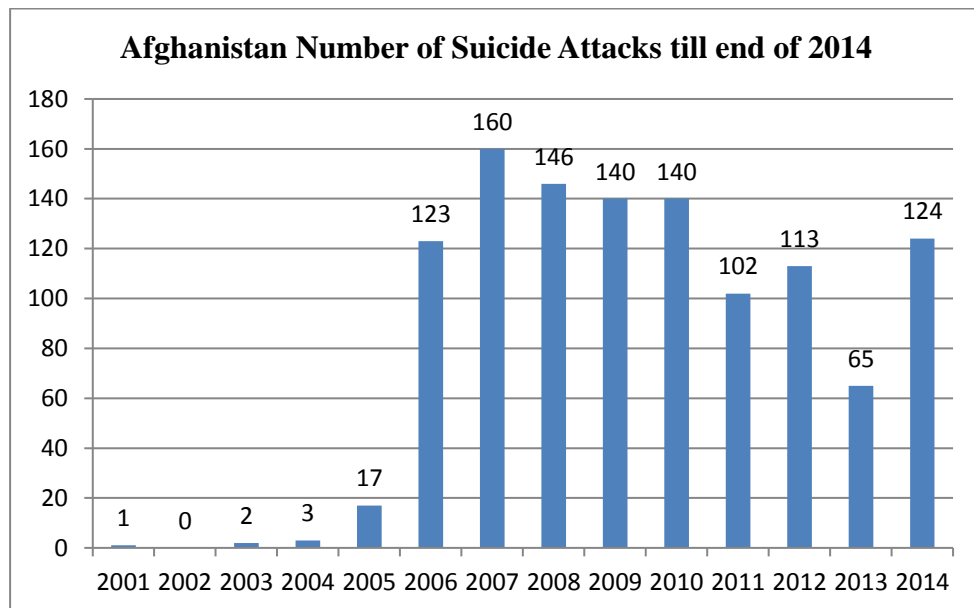


Figure 5: Afghanistan number of suicide attacks till end of 2014

(Source: India-based Institute of Conflict Management (ICM), The United States Department of State Statistical Information on Terrorism in 2012, Chicago Project on Security and Terrorism, and the INSS.)⁸⁵

Also”

The United States Department of State, Statistical Information on Terrorism in 2012, May 2013. Accessible via: <http://www.state.gov/documents/organization/210288.pdf>.

And also:

http://en.wikipedia.org/wiki/Suicide_bombings_in_Iraq_since_2003

⁸⁴ Dan Eggen and Scott Wilson, “Suicide Bombs Potent Tools of Terrorists”, *Washington Post* (17 July 2005), Accessible via: (<http://www.washingtonpost.com/wp-dyn/content/article/2005/07/16/AR2005071601363.html>)

⁸⁵ <http://cmcpk.wordpress.com/2012/01/01/significant-decline-in-suicide-attacks-in-pakistan/>

For the full 2011 year see: Conflict Monitoring Centre, Annual Report 2011

Also:

Chicago Project on Security and Terrorism. Accessible via: <http://cpost.uchicago.edu/database/methodology/>

The number of suicide attacks in Afghanistan was 2.5 times higher than Pakistan in 2011. Militants carried out 102 suicide attacks in Afghanistan in which 675 people were killed. In 2012 there was a slight rise in number of suicide attacks from 102 in 2011 to 113 in the year after. After a significant decrease in number of suicide attacks in 2013 this number almost doubled in 2014. The total for Afghanistan is over 1100 suicide attacks, claiming over 5000 lives.⁸⁶

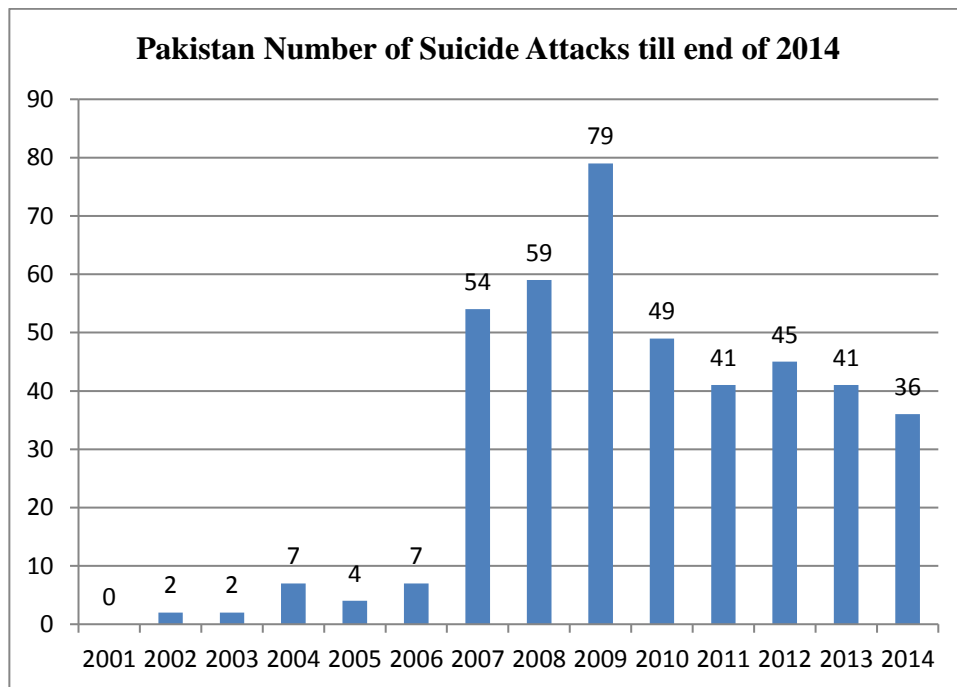


Figure 6: Pakistan number of suicide attacks till end of 2014

Also:

Yotam Rosner, Einav Yogev and Yoram Schweitzer, A Report on Suicide Bombings in 2013, INSS Insight No. 507, January 14, 2014. Accessible via: <http://www.inss.org.il/index.aspx?id=4538&articleid=6408>

Also:

Yoram Schweitzer, Ariel Levin and Einav Yogev, Suicide Attacks in 2014: The Global Picture, INSS Insight No. 653, January 6, 2015. Accessible via: <http://www.inss.org.il/?id=4538&articleid=8514>

Also:

The United States Department of State, Statistical Information on Terrorism in 2012, May 2013. Accessible via: <http://www.state.gov/documents/organization/210288.pdf>.

⁸⁶ (<http://cnsnews.com/news/article/suicide-bombings-afghanistan-pakistan-have-soared-decade-911>)

And also see:

The United States Department of State, Statistical Information on Terrorism in 2012, May 2013. Accessible via: <http://www.state.gov/documents/organization/210288.pdf>.

Source: Islamabad based Conflict Monitoring Centre (CMC), Annual Report 2011, Pakistan Bodycount, and The United States Department of State, Statistical Information on Terrorism in 2012.⁸⁷ There was one suicide attack executed in 1995 on the Egyptian embassy in Islamabad which is not shown in the graph.

The most recent developments of suicide terrorism

In 2012 there were 340 suicide attacks worldwide resulting in 2,223 deaths and 4,410 injuries. Suicide attacks in 2012 were 4.7 times as lethal as non-suicide attacks. In 2012, 11.1 percent of all attacks in Afghanistan were suicide attacks. This represents one-third (33.2%) or 113 attacks of all suicide attacks worldwide, while the remaining suicide attacks occurred primarily in Iraq 65 attacks (19.1%), Pakistan 45 attacks (13.2%), Nigeria 35 (10.3%), Yemen 26 attack (7.7%), Syria 23 attacks (6.8%), and Somalia 16 attacks (4.7%) and the rest of the world 17 attacks (5%).⁸⁸

The number of suicide bombings around the world surged 94 percent in 2014 comparing to the previous year of 2013. Around 3,400 people were killed in suicide attacks in 2014, compared with 2,200 in 2013, a 37.5 percent increase. There were 592 suicide attacks in 2014, compared with 305 in 2013.⁸⁹

⁸⁷ <http://cmcpk.wordpress.com/2012/01/01/significant-decline-in-suicide-attacks-in-pakistan/>

Also:

<http://pakistanbodycount.org/analytics>

also:

Yoram Schweitzer, Ariel Levin and Einav Yogev, *Suicide Attacks in 2014: The Global Picture*, INSS Insight No. 653, January 6, 2015. Accessible via:

<http://www.inss.org.il/?id=4538&articleid=8514>

And also:

The United States Department of State, Statistical Information on Terrorism in 2012, May 2013. Accessible via: <http://www.state.gov/documents/organization/210288.pdf>.

⁸⁸ The United States Department of State, Statistical Information on Terrorism in 2012, May 2013. Accessible via: <http://www.state.gov/documents/organization/210288.pdf>.

⁸⁹ Number of suicide bombings around world surged 94% in 2014 amid rise of ISIS, Haaretz, Tuesday, January 06, 2015 Tevet 15, 5775. Accessible via: <http://www.haaretz.com/news/diplomacy-defense/.premium-1.635193>

There was a significant rise in the number of suicide bombings in the Middle East in 2014: 370 attacks with some 2,750 dead, compared with 163 and 1,950 killed in 2013. This was especially notable in Iraq (271 attacks, up from 98), Yemen (29 attacks, up from 10), Lebanon (13 attacks, up from three) and Libya (11 attacks, up from one).⁹⁰ The number of suicide bombings in Syria remained at 41. Four such attacks were carried out in Egypt compared with six the previous year. The non-Arab Muslim world, Afghanistan in particular as well as Africa, saw a rise in suicide bombings. The suicide attacks conducted by Boko Haram (32 killing some 500 people) made up half the number of such attacks the organization has carried out since it started using the tactic in 2011.⁹¹

As was expected, the trend continued in 2015 due to the instability in several countries and the increasing number of religious and ethnic conflicts, as well as the growing strength of groups like Daesh and al-Qaeda in Iraq and Syria. According to the Chicago Project on Security and Terrorism, as of 1 January to September 30 2015, over 480 suicide attacks killed more than 4550 and wounded above 8300 in 18 countries, which indicates no positive sign in any aspects.⁹²

Suicide attacks and the Islamic faith

Based on what happened in Lebanon during early 1980s, Muslim militant groups are recognized as the pioneers of suicide attacks in the modern world.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² http://cpostdata.uchicago.edu/search_results_new.php

After a temporary absence from the mid-1980s until the mid-1990s Muslim militants groups have returned to suicide attack strategies and now it seems that militant Muslim groups are behind the great majority of suicide attacks. In 2013, for example, it is believed that Muslim militants were responsible for over 95 percent of the all suicide attacks globally.⁹³ To gain a better understating of the role of Muslim groups in regard to such developments it is helpful to categorize the durations of suicide attacks into smaller and more coherent time frames. Suicide attacks show a general pattern allowing for a division into three chronological periods – the 1980s with Shia militants at the centre stage; the 1990s with non-religious groups dominating; and the 2000s onward with Sunni militant groups as the new hub. During the first two phases, as the following table shows, twelve organizations with different religious and political affiliations resorted to the use of suicide tactics against their enemies from the early 1980s until February 2000.

⁹³ Yotam Rosner , Einav Yogev and Yoram Schweitzer, *A Report on Suicide Bombings in 2013*, INSS Insight No. 507, January 14, 2014. Accessible via: <http://www.inss.org.il/index.aspx?id=4538&articleid=6408>

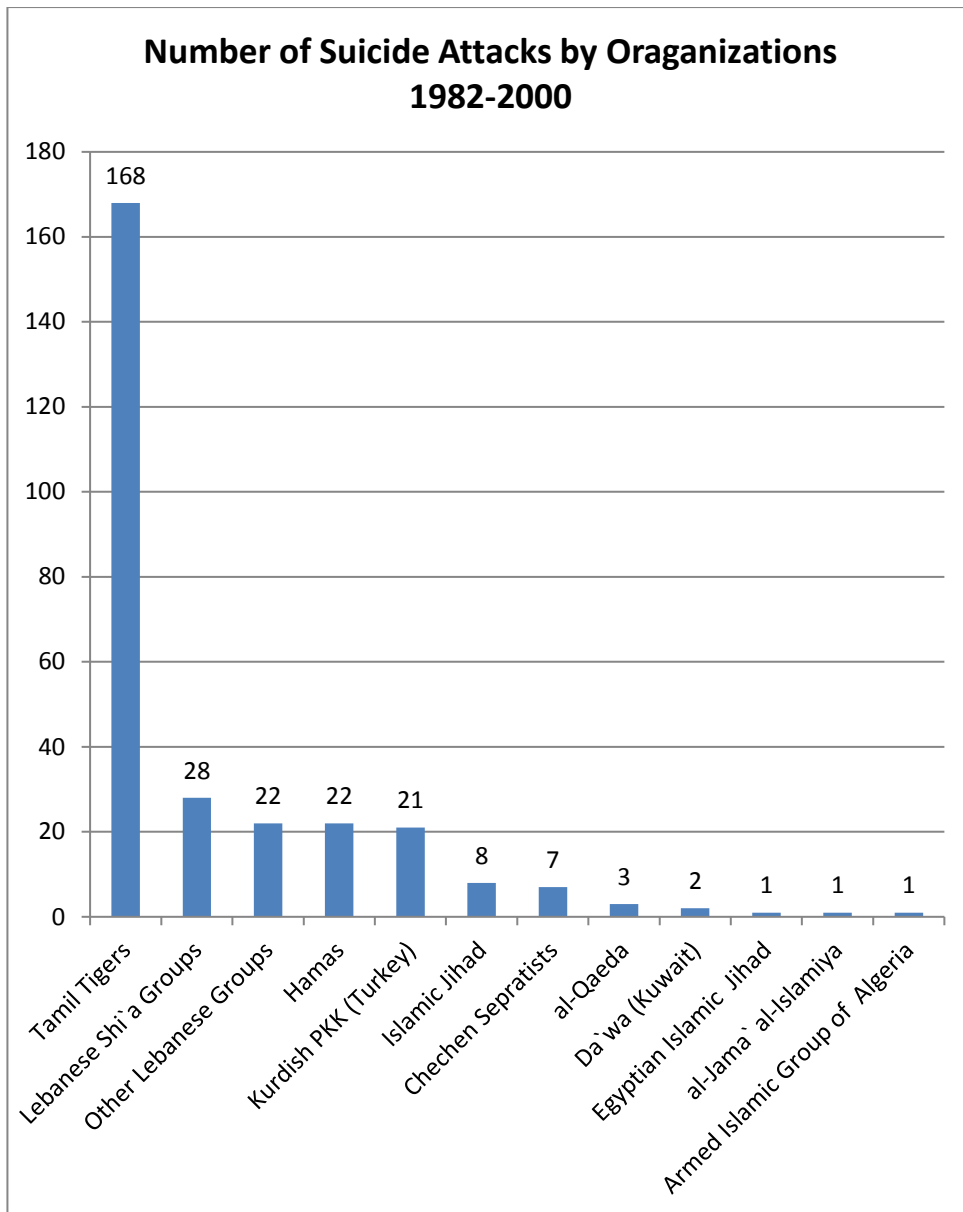


Figure 7: Number of suicide attacks by organisations 1982-2000

(Sources: US Army Training and Doctrine Command, *Handbook No. 1.03, Suicide Bombing.*)⁹⁴

As we know from the 9/11 terrorist incidents onwards, and especially after the 2003 invasion of Iraq, there was a significant shift from Shia and secular groups using suicide tactics toward the same tactic being used by Sunni

⁹⁴ US Army Training and Doctrine Command, *Handbook No. 1.03, Suicide Bombing.*

extremist militants. The high portion of suicide attacks conducted by Muslim militant groups raises a question about the nature of the relationship between the Islamic faith and such incidents. To answer this question it needs to be borne in mind that, as with many other things, there is no monolithic approach or consensus about suicide attacks among Muslims. Even according to those groups of traditionalist Muslims which support the idea of military jihad, a suicide attack is usually considered to be contrary to orthodox Islamic legal rules of warfare because it involves the great sin of suicide and therefore is religiously prohibited. According to the Islamic faith, suicide is a major sin and the Quran forbids all forms of suicide:

And kill yourselves not, for God is to you truly Merciful. (4:29)⁹⁵

As we see, the Quran not only rejects suicide but recommends those who are driven to despair to have faith in God's mercy in the hope that they may be relieved of their suffering. Another Quranic authority on the prohibition of suicide is found in verse 195 of the *Baqara* Chapter where a prohibitive text addresses the people:

And spend in the way of Allah and do not throw [yourselves] with your [own] hands into destruction. And do good; indeed, God loves the doers of good. (2:195)⁹⁶

In addition to clear prohibition of self-destruction, suicide contradicts another important dictum of the Quran; namely, 'sanctity of life':

⁹⁵ يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا (النساء: ٢٩)

⁹⁶ وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ (البقرة: ١٩٥)

... slay not the life which God has made sacrosanct unless it be in a just cause. (6:151)⁹⁷

Theoretically, for suicide to not contradict the ‘sanctity of life’ principle there can be only one possible justification, namely if the perpetrator considers himself/herself to be committing a great crime, because of enacting suicide which itself deserves death penalty. Even then there is a need for a legal warrant released by a valid authority which is not practical because no religious authority can permit the great sin of self-destruction, even as punishment for another sin. In such cases the one who commits suicide is supposed to be considered as the executer of a death penalty against himself/herself because of being involved in suicide terrorism. Even this option cannot be applied to those who commit the great crime of suicide terrorism, because it is punishment prior to committing crime and is unjust. This is besides the fact that perpetrators of suicide terrorism never consider themselves as criminals who deserve a ‘death penalty’, but rather see themselves as becoming martyrs.

Based on clear Quranic authority, suicide is forbidden in Islam without any exception whatsoever. Suicide, as a great sin, is an offence for which the perpetrator is liable, in the event of an unsuccessful attempt, to a deterrent but discretionary penalty of *tazir*. Even when the attempt succeeds, the person is still liable to an expiation or *kaffarah* which may be taken from his property.⁹⁸

⁹⁷ وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ (الانعام ١٥١)

⁹⁸ Kamali, *Shari‘ah Law*, p. 283.

Such clear and strict teachings against suicide, any form of it, have always been accepted by mainstream Muslim theologians since well before the current phenomenon of suicide attacks. Indeed they are considered to be clear violations of classical Islamic law. As Bernard Lewis states: “The emergence of the now widespread terrorism practice of suicide bombing is a development of the 20th century. It has no antecedents in Islamic history, and no justification in terms of Islamic theology, law, or tradition.”⁹⁹ Accordingly suicide tactics could be considered as ‘*bida`h*’ (بدعة). Any addition which is against the received tradition of Islamic teachings is generally considered to be ‘innovation’ or ‘*bida`h*’ and as such is rejected by all branches of the Islamic faith.

Opposed to this mainstream approach, and unlike traditionalist Muslims, modern militant radical organizations which utilize suicide attacks not only do not consider such tactics to be against Islamic teaching but claim that what they do is in fact jihad and as such the religious duty of all believers.¹⁰⁰ While these militant groups confirm that it is the Islamic jurisprudence which is the source of authority in justifying or rejecting any action in the name of Islam, they do not explain according to which section of fiqh and under what form of jihad their actions are justified by Islamic jurisprudence but rather confine the loose use of the jurisprudential term ‘jihad’ without specifying how exactly jihad justifies their conduct. Instead, to justify their infamous acts of suicide terrorism, they might recourse to unorthodox interpretations of rare and ambiguous individual incidents in the history of Muslims which have

⁹⁹ Bernard Lewis and Buntzie Ellis Churchill, *Islam: The Religion and the People*, Wharton School Publishing, 2008, p. 53

¹⁰⁰ The al-Qaeda manual on “declaration of jihad”.

never been understood as justifier of suicide by the mainstream. One instance, for example, could be using the case of Auf ibn Harith in the Battle of Badr. Ibn Ishaq reports that the Prophet encouraged “plunging into the midst of the enemy without armour”.¹⁰¹

The irony is that the major Muslims historians including Ibn S`ad, Ibn Kathir, Tabari and also Ibn Ishaq himself have recorded names of different ‘protective tools’ amongst them at least seven armours as well as several shields and helmets which the Prophet used to use in battles. Neither Ibn Ishaq nor any other historiographer has reported that the Prophet had thrown his armour, or other protective tools, away and had plunged into the midst of the enemy. It is while the Quran counts ‘saying without doing’ among the most hated acts in the eyes of God: *Great is hatred in the sight of God that you say what you do not do.* (Q.61:3)¹⁰² The least logical consequence of such claims is accusation of the Prophet of hypocrisy because of encouraging others to do what he himself abstained from doing.

Since it is Islamic jurisprudence which decides what actions are permitted and what actions are prohibited for the traditionalist Muslims, the focus of my research will be to investigate what Shia jurisprudence has to say on suicide terrorism and as such I will avoid addressing individual cases such as the above mentioned one. Still it is necessary to determine position of two, exceptionally, popular non-jurisprudential justifications of suicide terrorism which are seen Islamic both by insiders and outsiders. These two are

¹⁰¹ The life of Muhammad; a translation of Ishaq’s *Sirat Rasul Allah*, A. Guillaume, Oxford University Press, 1955, p. 300 Hadith No 445.

¹⁰² كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لَا تَفْعَلُونَ (الصف: 3)

martyrdom and retaliation. As well as investigating different aspects of these two concepts, I will also explain their relation to Islamic jurisprudence.

Chapter Four

Non-Jurisprudential Justifications of Suicide Terrorism

Introduction

The fact that there is no jurisprudential support for suicide terrorism in Islamic theology does not mean that extremists are unable to carry out such operations in the name of their religion. In this chapter, I shall discuss the main non-jurisprudential ways in which suicide operations have been justified religiously by Muslim perpetrators of suicide terrorism. Before engaging the discussion, it must be restated that in investigating non-jurisprudential justifications for suicide terrorism, I maintain my jurisprudential perspective methodology. Retaining the jurisprudential approach may imply for some that I am defending jurisprudentialism and therefore constructing a position that implicitly rejects the critiques which will be outlined shortly. The reason this position has been adopted is in order to demonstrate that such religious justifications cannot be defended jurisprudentially. In other words, Islamic jurisprudence either must reject them, because they contradict long established jurisprudential principles, or maintain silence toward them. Jurisprudence cannot defend them because they are outside its normative system. The two most cited non-jurisprudential religious justifications for suicide terrorism are martyrdom, especially -of course not exclusively- among Shias, and ‘retaliation’, favoured among Sunnis.

I. Martyrdom

While, in Western literature, martyrdom usually means “acts of voluntary death” in the name of one’s religious beliefs¹⁰³, in Islamic literature it is the cause that matters; death *per se* is not the focus. Of course, taking part in legitimate warfare, where there is a possibility of death, can be included as such in a religious cause, for death is the side effect and not the core matter by itself – as the Quran reveals: *And We shall bestow on him who fights in the way of God, whether he is killed or is victorious, a glorious reward.*¹⁰⁴

Martyrdom has had the greatest impact in Christianity, followed by Judaism, with the least impact among Muslims.¹⁰⁵ In Islam, unlike Christianity and Judaism, voluntary pain and suffering is not an essential part of martyrdom. However, and unlike what David Cook believes, in Islam martyrdom is not essentially associated with an “active choice sought out a violent situation with godly intention and the death as a result of that choice”¹⁰⁶ and, as such martyrdom in Islam is not limited to the “fighting martyr of religious warriors.”¹⁰⁷ What determines martyrdom in Islam is the ‘pure intention in doing the religious duty’ and not seeking out a violent situation in and of itself. We know that none of early martyrs of Islam, *Yasir* and *Sumayya* amongst the most famous of them, were engaged in any kind of violence let alone the warfare. Then neither ‘voluntary pain’ nor ‘active choice of a violent situation’ are coherent elements of Islamic martyrdom.

¹⁰³ Veronica Ward, “Martyrdom in the Three Monotheistic Religions” in *Religion and Terrorism*, edited by V. Ward and R. Sherlock, p. 37.

¹⁰⁴ Q.4:74

¹⁰⁵ Ward, “Martyrdom in the Three Monotheistic Religions”, p. 37.

¹⁰⁶ David Cook, *Martyrdom in Islam*, Cambridge University Press, 2007, p. 30.

¹⁰⁷ Ibid.

One major exception is the Kharijite movement. Unlike other Islamic branches which discouraged active seeking of martyrdom, Kharijites encouraged the seeking of it. Interpreting verse 4:74 as the desirability of seeking martyrdom, Kharijites called themselves ‘*al-shurat*’, or vendors, meaning those who sell the life of this world for the next.¹⁰⁸ It is obvious that rejection of kharijites by all Islamic denominations makes branding the kharijites’ position as Islamic irrelevant.

Martyrdom, or *shahadah* (شهادة), is a key term in the literature on so-called Islamic suicide operations. Suicide bombings executed by Muslim militant groups are often called ‘self-martyrdom operations’ by both the executors as well as the supporters of such tactics. This clearly shows how deeply the idea of ‘martyrdom’ is conceptually embedded in suicide tactics. Islamic martyrdom – or death in the service of Islam – is considered by many Muslims to be a noble and defensible act. The majority of the Muslim *ulama* postulate that after the prophets of God, martyrs or ‘*shahids*’ occupy the highest positions in the heaven. This notion is based on verse number 69 of Chapter four in the Quran where the ‘*shohada*’ [sing. *shahid*] are mentioned alongside the prophets.¹⁰⁹ This implies that someone who dies and is subsequently called a martyr cannot be criticized by the truly pious for the action which led to his death. For the purposes of my current discussion, it is sufficient to say that because the concept of ‘martyrdom’ is accepted as a settled religious term in the Islamic faith, only individual acts of ‘suicide terrorism’ can be debated

¹⁰⁸ Daniel Brown, “Hasan al-Banna; the Art of Death and Contemporary Muslim Ideologies of Martyrdom.” In *Religion and Terrorism*, edited by V. Ward and R. Sherlock, p. 157.

¹⁰⁹ وَمَنْ يُطِيعِ اللَّهَ وَالرَّسُولَ فَأُولَئِكَ مَعَ الَّذِينَ أَنْعَمَ اللَّهُ عَلَيْهِمْ مِنَ النَّبِيِّينَ وَالصِّدِّيقِينَ وَالشُّهَدَاءِ وَالصَّالِحِينَ وَحَسُنَ أُولَئِكَ رَفِيقًا (النساء ٦٩)

as justified acts of martyrdom or otherwise, not the concept itself. It means that since martyrdom has a very special position in the Islamic faith, if someone is authentically labelled a 'martyr', it is subsequently difficult to criticize the action that led to that death which, on occasion, may include suicide tactics as well.

Despite the established position of 'martyrdom' itself in Islamic tradition, space still remains for different understandings of it. Martyrdom can be understood or interpreted in two different ways: 1- appreciation of death or, as 2- appreciation of life. With the first understanding, 'life' has no true and in-depth value of itself. The only possible value for life is the quality of death which brings life to an end. According to the second approach, life not only has essential value (by reason) but also it is sacred from a religious perspective. Then, death is undesirable and is only justifiable if it is necessary for the continuation of life. From the Islamic viewpoint, as Q5:32 for example indicates, it seems it is the second perspective which is acceptable. With the above point in mind, I am going to examine the relationship between martyrdom, as a religious concept in the Islamic faith, and the current form of terrorism employing suicide tactics in the name of Islam.

Despite the fact that there is no jurisprudential justification for suicide terrorism in Shia fiqh, if it is not possible to reject the religious authenticity of calling such actions martyrdom, then little has been achieved because the sanctified position of martyrdom is so impregnable that no ruling can oppose it. Jurisprudentially speaking, when a suicide attack is justified, it is because of a clear legal-technical reason, albeit arguably an erroneous one. The idea of religious support for suicide terrorism is based on turning the concept of

'*shahadah*', or martyrdom, from being the reward for fulfilling jurisprudential duties, into an independent action. These kinds of operations are thus called '*amaliyya al-istishhadiyya*' which literally means 'martyrdom-seeking operations' and not 'martyrdom operations' or 'self-martyrdom operations' as it is so often translated into English. It means that 'to seek martyrdom' is an action which can be judged independently and the means of achieving it can be quite varied. However, there is no legitimate action such as 'martyrdom-seeking' in Islamic Shia jurisprudence.

The above jurisprudential error, I argue, is perpetrated by basing the assessment of the believer's action on the intention rather than on religious duty per se, as determined by respected jurisprudential principles. Often, the famous saying of the Prophet affirming that actions are evaluated by the intention behind them (*al-A`maalu bi-Nyyat* بالنيات الاعمال)¹¹⁰, is used to justify this distortion, which results in the relevant body of jurisprudence being ignored. Such an intention-based approach takes control of the believer's conduct out of hands of jurisprudence and yields it up to the individual's intent, leaving the person free of any outside control which is supposed to be imposed by jurisprudence. The practical result of such an approach is witnessed in the filmed testaments of some of those who commit suicide terrorism. For, instead of indicating how exactly their actions have been approved by Islamic law, they justify their tactics simply on a, supposedly, 'good intention' as being in the service of waging jihad, protecting Islam, combating oppressors, stopping foreign exploitation, and so on. In many

¹¹⁰ Mohammad baqer Majlesi, *Bahar al-Anwar*, vol. 67, p. 210.

cases, the mere usage of the religious and holy concept of martyrdom for such causes might imply that Islamic tradition does offer some tacit support for these kinds of operations. However, in reality, the use of a holy concept for labelling an action, in the absence of any independent evidence, does not turn the action into a holy one. And, in regards with the position of Shia jurisprudence about this ‘technical twist’, it is to say that in Shia jurisprudence only few specific rituals are intention-based, meaning that the “intention of nearness to God” is the single criterion for their acceptability and no other criteria is needed for evaluating them. With other actions, it is the outward consequence that makes them desirable/legitimate or undesirable/illegitimate. To consider suicide tactics legitimate based on the intention of the perpetrators, it is necessary to see such actions as ‘intention-based canonical rituals of Islam’, something that not even the most fanatic extremists claim.

Other than intention-based canonical rituals of Islam such as prayers, fasting, almsgiving and pilgrimage, and in contradiction to what has been claimed by supporters of suicide terrorism, ‘intention’ or ‘*niyyat*’ (نيت), is only a complementary element in completing an inherently good action. It means that, with bad intent, even a good action does not benefit the doer. Verse 264 of Chapter two in the Quran clearly states that a bad intent spoils a good action.¹¹¹ In order to assess an action as religiously good, in addition to the

¹¹¹ ‘O Believers, do not spoil your charity by taunts and humiliation to the recipients like the one who practices charity to be seen by men, while he neither believes in Allah nor in the Last Day. His charity may be likened to the rainfall on a rock which had only a thin layer of soil upon it. When heavy rain fell on it, the whole of the soil washed away and the rock was left bare Such people do not gain the reward they imagine they have earned by their seeming charity; Allah does not show the Right Way to the ungrateful.’ (Q.2:264)

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تُبْطِلُوا صَدَقَاتِكُمْ بِالْمَنِّ وَالْأَذَى كَالَّذِي يُنْفِقُ مَالَهُ رِئَاءَ النَّاسِ وَلَا يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَمَثَلُهُ كَمَثَلِ صَفْوَانٍ عَلَيْهِ تُرَابٌ فَأَصَابَهُ وَابِلٌ فَتَمَرَكَهُ فَصَلْدًا لَا يَقْدِرُونَ عَلَى شَيْءٍ مِّمَّا كَسَبُوا وَاللَّهُ لَا يَهْدِي الْقَوْمَ الْكَافِرِينَ (البقرة: ٢٦٤)

good nature of the deed itself, the doer's good intent is essential as well. But the significance of 'intention' does not mean that good intent can change the bad nature of a deed. The jurisprudential principle of taking into account the "practical odiousness of actions", *asl qobhe fe`li* (اصل قبح فعلی), in assessing the religious value of actions, is against justifying bad deeds because of a putative good intent. In several verses of the Quran, committing bad deeds even with good intention has been considered a transgression, and therefore prohibited. The following verse, which prohibits doing wrong things to the religiously approved enemy in the heat of wartime, is a clear instance of that: *O you who believe stand up for God, witnessing with justice; and do not let the hatred [enmity] of a people deviate you from justice. Act justly, this is closest to piety; and beware of God. Surely God is aware of all you do. (Q.5:8)*

As noted, both according to the Quranic and jurisprudential principles, a good intent by itself is not enough to confer religious acceptability upon an action. Actions must be good and just in themselves in order to be accepted as religious. This is why the position of Islam with respect to suicide terrorism needs to be studied independently of the issue of the intent of its practitioners. Of course, if an action is religiously good then its executors will be rewarded and, for the one who loses his/her life, the reward is in becoming a martyr, which is the closest rank to the prophets' position.

In the following discussion, the importance of the concept of 'martyrdom' in Islam and its relation to suicide terrorism will be clarified. From a practical point of view, the importance of a study of the relationship between the Islamic concept of "martyrdom" and suicide terrorism becomes clearer when it is realized that martyrdom is an effective tool for attracting support for

terrorist groups. Offering an appropriate reward is extremely helpful in encouraging an individual to act in a specific way. When it comes to sacrificing one's own life, the payoff must be something seen to be worth more than that person's life. Martyrdom plays a decisive and irreplaceable role in providing the reward needed to persuade people to sacrifice their lives. Accordingly, martyrdom is an important, rather unparalleled tool for recruiting the required human resources for suicide operations. If organisers of suicide terrorism are able to label such actions as 'martyrdom' then they will have less problem in attracting the support of adherents, or at least their sympathy. It is, as mentioned previously, the sanctified status of martyrdom in Islamic culture which allows recruiters to offer such a potentially attractive reward.

To decide whether or not the concept of martyrdom may support the claims of perpetrators of suicide terrorism, it is necessary, first, to clarify the literal meaning of this concept in the Islamic Shia tradition. According to the *Loghatnameh* (Dictionary of) *Dehkhoda* the term '*shahadah*', which in contemporary Persian is used for "martyrdom" as well as other concepts, essentially means "witnessing".¹¹² Thus '*shahadah*' in the Persian language does not necessarily mean 'martyrdom'. Indeed, in the Quran, as the holy text of the Islamic faith, *shahadah* has never been used to mean martyrdom. *Shahadah* in the Quran has different meanings. One of the meaning of *shahadah* in the Quran, "those who believe deeply in God", has perhaps the closest meaning to 'martyr' if we understand martyrs as 'those who are killed

¹¹² Accessible via: <http://www.loghatnaameh.org/dehkhodasearchresult-fa.html?searchtype=0&word=2LTZh9in2K%2fYqg%3d%3d>

in the good cause'. The analogy is that since the loss of life for the cause believed in is the strongest evidence for a deep belief in such a cause, and since, in the Quran, those who believe deeply in God have been called 'shahid' then shahid can be used for those who are killed in the course of committing acts avowed to be in the service of God and Islam. As such, casualties of a legitimate war (on the believers' side of course) are included in the category of martyrs by Muslims because, by risking their lives, they have demonstrated the highest level of commitment to their faith and belief in God. A clear example of where the word 'shahadah' is used in the Quran referring to the high position of good believers is Verse 19 of Chapter 57:

And those who have believed in Allah and His messengers are [in the ranks of] the truly sincere and [shohada] those present before their Lord (for more information regarding translation of the term shahid in the Quran see appendix No.1). For them is their reward and their light. But those who have disbelieved and denied Our verses - those are the companions of Hellfire.¹¹³

According to this argument, the term and concept 'martyrs', if not equivalent, must be included in the category of 'shohada' because sacrifice of life is equated with the highest demonstration of deep belief in, and commitment to, God. But still this naming is indirect because the action leading to an 'honorific death' is seen as a sign of the deep and sincere belief which

¹¹³ وَالَّذِينَ آمَنُوا بِاللَّهِ وَرُسُلِهِ أُولَئِكَ هُمُ الصَّادِقُونَ وَالشَّهَدَاءُ عِنْدَ رَبِّهِمْ لَهُمْ أَجْرُهُمْ وَنُورُهُمْ وَالَّذِينَ كَفَرُوا وَكَذَّبُوا بِآيَاتِنَا أُولَئِكَ أَصْحَابُ الْجَحِيمِ (الحديد: ١٩)

deserves the title of ‘martyrdom’. Aside from that, there is no direct addressing of casualties of war as ‘shahid’ in the Quran.

If the Quranic ‘*shahadah*’, in contrast to the popular definition prevalent in today’s Islamic languages, does not mean ‘martyrdom’, then to what does this term in the Quran refer? There are 160 occurrences of the word ‘*shahadah*’ or its derivatives in 123 Quranic verses. In the Quran, the word ‘*shahadah*’ generally means ‘witness’ and can have neutral, negative or positive connotations. The fact that the Quranic word ‘*shahadah*’ is used in a number of verses in quite different senses from its popular contemporary meaning – ‘martyrdom’ can help with getting a better understanding of this term for this current discussion. In the Quran ‘*shahadah*’ is employed as a neutral term as well as negative and also positive terms. For example in the verse 282 of Chapter 2, it concerns contracts. This verse, with seven occurrences, has the highest number of occurrences of the word ‘*shahada*’, and all seven cases may be said to have neutral connotations.¹¹⁴ Occurrences of the word ‘*shahada*’ and its derivatives in this verse are neutral and convey the prosaic meaning of a witness in respect to contracts and commercial transactions.

‘*Shahadah*’ in its negative meaning has been used quite rarely in the Quran. This can be seen most clearly in the verse 72 of Chapter 25: *And [the*

114 أَلَيْهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتَبُوهُ ۖ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ ۚ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ ۚ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسْ مِنْهُ شَيْئًا ۚ فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمِلَّ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ ۚ وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ ۚ فَإِنْ لَمْ يَكُنَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكَّرَ إِحْدَاهُمَا الْأُخْرَىٰ ۚ وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا ۚ وَلَا تَسْأَلُوا أَنْ تَكْتَبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ۚ ذَلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمٌ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَابُوا ۚ إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتَبُوهَا ۚ وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ ۚ وَلَا يُضَارَ كَاتِبٌ وَلَا شَهِيدٌ ۚ وَإِنْ تَفَلَّوْا فَإِنَّهُ فُسُوقٌ بِكُمْ ۚ وَاتَّقُوا اللَّهَ ۚ وَيَعْلَمَ اللَّهُ ۚ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ (البقره ٢٨٢)

*believers are] those who do not give witness to falsehood, and when they pass near ill speech, they pass by with dignity. (Q.25:72).*¹¹⁵

In the Quran, the positive meaning of the word ‘*shahada*’ is equivalent to “witness to the truth”. The following verse is an example where ‘*shahada*’ has been used in its positive meaning: *Thus We made you a moderate community, that you may be witnesses to humanity, and that the Messenger may be a witness to you... (Q.2:143)*¹¹⁶

And again, verse 3:53 uses the term in the same way: *Our Lord! We have believed in what You have sent down and we follow the Noble Messenger, therefore record us among the witnesses of the truth. (Q.3:53)*¹¹⁷

Another case of usage of ‘*shahadah*’ in its positive meaning is verse four of Chapter 69: *And whoever obeys Allah and the Messenger - those will be with [in ranks of] the ones upon whom Allah has bestowed favor of the prophets, the steadfast affirmers of truth, the witnesses of the truth and the righteous. And excellent are those as companions. (Q.4:69)*¹¹⁸

Shahadah in its positive meaning also has been used for God himself in the Quran. In actual fact, the Quranic term ‘*shahid*’, which is often used to mean ‘martyr’ in contemporary popular Islamic literature, is used in many cases to describe one of God’s attributes which is “witness of the truth”.¹¹⁹

¹¹⁵ وَالَّذِينَ لَا يَشْهَدُونَ الزُّورَ وَإِذَا مَرُّوا بِاللَّغْوِ مَرُّوا كِرَامًا (الفرقان ٧٢)

¹¹⁶ وَكَذَلِكَ جَعَلْنَاكُمْ أُمَّةً وَسَطًا لِتَكُونُوا شُهَدَاءَ عَلَى النَّاسِ وَيَكُونَ الرَّسُولُ عَلَيْكُمْ شَهِيدًا ... (البقره 143)

¹¹⁷ رَبَّنَا آمَنَّا بِمَا أَنْزَلْتَ وَاتَّبَعْنَا الرَّسُولَ فَاكْتُبْنَا مَعَ الشَّاهِدِينَ (آل عمران ٥٣)

¹¹⁸ وَمَنْ يُطِعِ اللَّهَ وَالرَّسُولَ فَأُولَئِكَ مَعَ الَّذِينَ أَنْعَمَ اللَّهُ عَلَيْهِمْ مِنَ النَّبِيِّينَ وَالصِّدِّيقِينَ وَالشُّهَدَاءِ وَالصَّالِحِينَ وَحَسُنَ أُولَئِكَ رِجَالًا (النساء ٦٩)

¹¹⁹ The following verses provide such cases: 2:204, 3:18, 3:98, 4:33, 4:79, 4:166 (two times), 5:111, 5:117, 6:19, 9:107, 10:29, 10:46, 13:43, 17:96, 22:17, 29:52, 33:55, 34:47, 41:53, 46:8, 48:28, 58:6, 59:11, 85:9, 100:7.

Alongside ‘shahadah’ as ‘witness’, the other main meaning of the word *shahadah* in the Quran is ‘seen’ (*contra* unseen). ‘*Shahadah*’ in verse nine of Chapter 13 has such a meaning: [*God is*] *Knower of the unseen and the witnessed, the Grand, the Exalted.* (Q.13:9)¹²⁰

As we see, there is no case in the Quran where ‘*shahadah*’ and its derivatives convey a meaning of martyrdom. This, as noted previously, does not mean that there is no indirect trace of the concept of martyrdom in the Quran. Regarding the concept and its relationship with ‘*shahadah*’, some points should be born in mind. First, as demonstrated above, there is no case where the word ‘*shahadah*’ is used to mean ‘martyrdom’, as circumstances in which a believer is killed for good cause, in the Quran. Second, in several Quranic verses including 2:154¹²¹, 3:169¹²², 4:74¹²³, 9:111¹²⁴, 47:4¹²⁵, and 61:4¹²⁶ those who risk their life in the cause of good are highly praised. Third, verse 19 of Chapter 57 indicates that ‘*shahadah*’ refers to an exalted spiritual status. The verse, however, does not necessarily imply that this status is given to those who have lost their lives in the cause of God and today are called ‘*shahid*’ or ‘martyr’. At the same time, the term does not exclude those who demonstrate their very strong belief in the God and His prophets by following their commands to the extent that are ready to endanger their lives if required so. Finally, although the word ‘*shahadah*’ has not been used as ‘martyrdom’

عَالِمِ الْغَيْبِ وَالشَّهَادَةِ الْكَبِيرِ الْمُنْتَعَالِ (الرعد: ٩) ¹²⁰

وَلَا تَقُولُوا لِمَنْ يُقْتَلُ فِي سَبِيلِ اللَّهِ أَمْوَاتٌ بَلْ أحيَاءٌ وَلَكِنْ لَا تَشْعُرُونَ (البقرة: ١٥٤) ¹²¹

وَلَا تَحْسَبَنَّ الَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ أَمْوَاتًا بَلْ أحيَاءٌ عِنْدَ رَبِّهِمْ يُرْزَقُونَ (آل عمران: ١٦٩) ¹²²

فَلْيُقَاتِلْ فِي سَبِيلِ اللَّهِ الَّذِينَ يَشْرُونَ الْحَيَاةَ الدُّنْيَا بِالْآخِرَةِ وَمَنْ يُقَاتِلْ فِي سَبِيلِ اللَّهِ فَيُقْتَلْ أَوْ يَغْلِبْ فَسَوْفَ نُؤْتِيهِ أَجْرًا عَظِيمًا (النساء: ٧٤) ¹²³

أَنَّ اللَّهَ اشْتَرَى مِنَ الْمُؤْمِنِينَ أَنفُسَهُمْ وَأَمْوَالَهُمْ بِأَنْ لَهُمُ الْجَنَّةُ يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ فَيُقْتَلُونَ وَيُقْتَلُونَ وَعَدَّا عَلَيْهِ حَقًّا فِي التَّوْرَةِ وَالْإِنْجِيلِ وَالْقُرْآنِ وَمَنْ أَوْفَى بِعَهْدِهِ مِنَ اللَّهِ فَاسْتَنْبِرُوا بِبَيْعِكُمُ الَّذِي بَايَعْتُمْ بِهِ وَذَلِكَ هُوَ الْفَوْزُ الْعَظِيمُ (التوبة: ١١١) ¹²⁴

وَالَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ فَلَنْ يُضِلَّ أَعْمَالَهُمْ (محمد: ٤) ¹²⁵

إِنَّ اللَّهَ يُحِبُّ الَّذِينَ يُقَاتِلُونَ فِي سَبِيلِهِ صَفًّا كَأَنَّهُمْ بُنْيَانٌ مَرْصُورٌ (الصف: ٤) ¹²⁶

in the Quran, it does not follow that the Quran has not mentioned the position of those who are killed in the service of God. As mentioned, there are many Quranic verses that clearly affirm that those who die in the way of God enjoy the highest spiritual status a human can aspire to:

Indeed, Allah has purchased from the believers their lives and their properties [in exchange] for that they will have Paradise. They fight in the cause of Allah, so they kill and are killed. [It is] a true promise [binding] upon Him in the Torah and the Gospel and the Qur'an. And who is truer to his covenant than Allah? So rejoice in your transaction which you have contracted. And it is that which is the great attainment. (Q:9:111)¹²⁷

Or: *And never think of those who have been killed in the cause of Allah as dead. Rather, they are alive with their Lord, receiving provision. (Q.3:169)¹²⁸*

The above verses describe the high status for those who are killed in the way of God. Whatever term is used to describe this highly praised group, even if it was not the word 'shahid', would find a high position in the Islamic literature. Irrespective of authenticity of labels such as 'shahid' for this group, if an action conforms to this description it is nearly impossible to find any religious ruling that might overrule it.

Regarding the position of the term 'shahid' in Shia jurisprudence, it is to say that in Shia jurisprudence the term *shahid* is used for one who is killed when fighting under the command of the immaculate Imam or his representative

¹²⁷ إِنَّ اللَّهَ اشْتَرَىٰ مِنَ الْمُؤْمِنِينَ أَنفُسَهُمْ وَأَمْوَالَهُمْ بِأَنَّ لَهُمُ الْجَنَّةَ يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ فَيَقْتُلُونَ وَيُقْتَلُونَ وَعَدَا عَلَيْهِ حَقًّا فِي التَّوْرَةِ وَالْإِنْجِيلِ وَالْقُرْآنِ وَمَنْ أَوْفَىٰ بِعَهْدِهِ مِنَ اللَّهِ فَاسْتَبْسِرُوا بِبَيْعِكُمُ الَّذِي بَايَعْتُمْ بِهِ وَذَلِكَ هُوَ الْفَوْزُ الْعَظِيمُ (التوبة ١١١)
¹²⁸ وَلَا تَحْسَبَنَّ الَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ أَمْوَاتًا بَلْ أحيَاءٌ عِنْدَ رَبِّهِمْ يُرْزَقُونَ (آل عمران ١٦٩)

exclusively appointed for war (in distinction for the general representative¹²⁹). The only difference between the classical and the more recent Shia jurisprudence in this regard (if such a distinction be possible at all) is that in recent jurisprudence, “being killed when defending the seed of religion” has been added to the set of criteria, which makes it broader than the old set. To avoid becoming side-tracked by peripheral issues, I shall now focus on two well-known definitions of the term *shahid* found in the classical and the more recent Shia jurisprudence. The first is from Allama Hilli’s works and the second is from Ayatollah Khomeini’s *Risalah*.

1. A Shahid is one who has been killed while fighting under the direct command of the immaculate Imam or his representative exclusively appointed for war.¹³⁰
2. A Shahid is one who has been killed while fighting under the direct command of the immaculate Imam or his representative exclusively appointed for war, or has been killed defending the seed of the religion.¹³¹

It is obvious that in absence of the immaculate Imam Ayatollah Khomeini’s inclusion of defenders of the “seed of the religion”, is a smart way for generalizing the term for the contemporary time. However, while fighting under the direct command of the immaculate Imam, at least theoretically and from a jurisprudential standpoint, could include preceptive jihad, defending the ‘seed of religion’ can only include ‘defensive warfare’ as will be discussed in chapter ten.

¹²⁹ Please refer to the “particular” and “general” representatives of Imam in chapter eleven.

¹³⁰ Abolqasim Najmaddin Ja`far al-Hilli, *Sharaye` al-Islam*, Qom, Dar al-huda lil-tabaye` wal-nashr, 1403 AH (lunar), Vol. 1, p. 30.

¹³¹ Rouhollah Mousawi Khomeini, *Tahrir al-wasilah*, Vol. 1, p. 66.

Martyrdom and the sanctity of life

Despite the importance and high status of ‘*shahadah*’ in Islam, this concept cannot be employed unconditionally. There is another term in Islamic teaching which must be taken into account when it comes to considering actions which pose any risk to life, namely that of ‘the sanctity of life’. Sanctity of life has its roots in the Quran where human life is considered to be the most valuable created by God: *slay not the life that God has made sacred*.¹³² The Quran decrees human beings to be the representatives of God on Earth¹³³, and the receptacle of God’s spirit.¹³⁴ It considers humans to be the holders of divine honour or, ‘*karamah*’ (كرامه)¹³⁵, and suggests that endangering life (of self¹³⁶ and others¹³⁷) is a great sin. In the Quran, killing a single person unjustly is considered tantamount to killing all people and, conversely, saving one life is considered equal to saving all humans. This illustrates the Quranic concept of sanctity of human life:

Therefore We ordained for the Children of Israel that he who slays a soul unless it be (in punishment) for murder or for spreading threat on earth shall be as if he had slain all mankind; and he who saves a life shall be as if he had given life to all mankind. And indeed again and again did Our Messengers come

¹³² Q.6:152.

¹³³ وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً قَالُوا أَتَجْعَلُ فِيهَا مَنْ يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ قَالَ إِنِّي أَعْلَمُ مَا لَا تَعْلَمُونَ (البقرة: ٣٠)

¹³⁴ فَإِذَا سَوَّيْتُهُ وَنَفَخْتُ فِيهِ مِنْ رُوحِي فَقَعُوا لَهُ سَاجِدِينَ (الحجر: ٢٩)

¹³⁵ وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا (الإسراء: ٧٠)

¹³⁶ يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا (النساء: ٢٩)

¹³⁷ وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيهِ سُلْطَانًا فَلَا يَسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا (الإسراء: ٣٣)

*to them with clear directives; yet many of them continued to commit excesses on earth (Q.5:32).*¹³⁸

The sacred value of human life requires rejecting any actions which place it at risk. Accordingly, the promotion of martyrdom would appear to be in contradiction to the concept of the 'sanctity of life'. To escape the apparent paradox resulting from promotion of martyrdom alongside the explicit Quranic injunction to observe the 'sanctity of life', some of Muslim thinkers such as Mohammad Khatami suggest that martyrdom should be accepted only when it is necessary for saving larger numbers of lives in a just way.¹³⁹ In this approach, the two terms 'martyrdom' and 'sanctity of life' are able to coexist. This is because a martyr becomes one who is killed when trying to save a large number of lives and, at least theoretically, not when endangering his/her life which is a sin itself. The sin regarding danger to the martyr's life goes to the killer and not the martyr.

The above approach refers to saving lives as a justifier for martyrdom and as such is much clearer than other justifiers for martyrdom such as 'serving of a high cause' or 'saving the seed of religion' which are difficult to agree on their outward cases. However, and unlike serving a high cause, a perceived danger to the seed of religion does not happen in the absence of reciprocal life-threatening communal violence and therefore is a threat to lives of innocents. Hence, when a Muslim society is attacked from the outside

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ بَعْدَ ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ (المائدة: ٣٢)

¹³⁹ جهاد و شهادت اسلامی اراده معطوف به زندگی است نه معطوف به مرگ و نه تنها زندگی خود انسان؛ بلکه زندگی انسان‌های دیگر ...

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because of religion, and it reacts proportionally to that, this can be seen an instance of legitimate defence as a means for stopping loss of lives and consequently is included in the category of ‘saving lives’. Then, the case of ‘danger to the seed of religion’ as a threat to the lives of those who are attacked because of their belief can be covered by the previous justification, and so there is no need for mentioning it separately.

For the Lebanese Shia jurist, Muhammad Mahdi Shams al-Din, to ensure the required conditions for each of the approved principles of ‘desirability of martyrdom’ and ‘sanctity of life’ are met, and to avoid clashes between these two concepts, jurisprudentially speaking, at least two main requirements must be met for an act of self-sacrifice (martyrdom) to not contravene the injunction of the sanctity of life:

1. It must be consequence of performing the crucial religious duty of stopping danger facing the “seed of religion”, which gives the action the necessary jurisprudential requirement of “being in the cause of God”.¹⁴⁰ Such a duty is considered so vital that it overrides the obligation to not harm the “sacred entity” that is human life.
2. The risk to life must be a contingent condition of fulfilling the duty. This means that undertaking any unnecessary risk spoils the moral-religious virtue of the action. This second condition in turn means that there must be no alternative way to fulfil the duty, otherwise such action would be considered as unnecessary risk to life which is prohibited by the Quran.¹⁴¹ In other words, there must be no lower-

¹⁴⁰ Q.2:154, Q.3:169, Q.4:74, Q.9:111, Q.47:4, Q.61:4.

¹⁴¹ وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ (البقرة: ١٩٥)

risk way or means of fulfilling the duty. Since the value of life is very high, it is difficult to find many things that their fulfilment equates to the same value of human life. The only exception is a greater number of loss of lives in the case of a lack of preventive action. But if an action is not preventive enough, meaning one endangering his/her life has no effect on decreasing the number of casualties, the executer's life included, then risk of life is excessive (as incompatible with sanctity of life) and therefore illegitimate.¹⁴²

Despite all the efforts that attempt to demonstrate the compatibility of martyrdom and sanctity of life, which primarily focus on the permissibility of endangering some lives (of invaders) to save a larger number of lives (of victims), or the higher cause of 'saving the seed of religion', the main problem still remains. Even if the question of the value of the endangered lives (of victims) is considered a just reason to extend the permission to use force against the aggressors and endanger their lives (because of their wrong deed), still the loss of the life of the martyr himself/herself requires an even greater burden of exculpatory evidence to be considered, consistent with the principle of observing sanctity of life, because the martyr has not done anything wrong to deserve death.

Regarding this issue, it appears that verses 2:154 and 3:169 are designed to solve the contradiction of the loss of the martyr's life with the principle of observing the sanctity of life. In these two verses, those who are killed in the

¹⁴² Shams al-Din, *Fiqh al-`unf al-musallah*, p. 175.

و اذا تعذر على الحركة الاسلاميه ان تدافع عن نفسها بغير استعمال العنف المسلح المستلزم للقتل و الجرح والتلاف او لم ينفذ هذا الدفاع في الدفع، فلا يشرع استعمال العنف المسلح ...
محمد مهدي شمس الدين، فقه العنف المسلح في الاسلام، الموسسه الدوليه للدراسات و النشر، بيروت، 1422، ص 175.

cause of God are considered to be ‘alive’ and believers are asked not to refer to them as dead: *And do not say of those who are killed in the cause of God, “Dead.” Rather, they are alive, but you do not perceive.* (Q.2:154)¹⁴³

And: Do not consider those killed in the cause of God as dead. In fact, they are alive, at their Lord, well provided for. (Q.3:169)¹⁴⁴

According to these verses, since the martyr is ‘alive’, martyrdom should not be considered to contradict the imprecation to observe the ‘sanctity of life’. And since no life is lost, (because martyr is considered alive), then ‘martyrdom’ does not contradict ‘sanctity of life’.

In addition to theoretical discussions over martyrdom, the previously approved cases of martyrdom by the religion also play an important role in both consolidation and promotion of martyrdom. Regarding the current discussion over suicide tactics, similar historical events are of the utmost significance because, as James Thomson observed, “One timely deed is worth ten thousand words”. For Shia Islam, the ‘tragedy of Karbala’ plays such a role in affirmation of martyrdom.

The tragedy of Karbala as an inspiration for martyrdom

In addressing the question of martyrdom, I have so far confined my focus to the Quranic verses. This is because the Quran is indubitably accepted by all Muslims. The sanctified position of the Quran is so unassailable that some scholars such as Oliver Leaman call it the heart of the religion of Islam.¹⁴⁵ By

¹⁴³ وَلَا تَقُولُوا لِمَنْ يُقْتَلُ فِي سَبِيلِ اللَّهِ أَمْوَاتٌ بَلْ أَحْيَاءٌ وَلَكِنْ لَا تَشْعُرُونَ (البقرة: ١٥٤)

¹⁴⁴ وَلَا تَحْسَبَنَّ الَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ أَمْوَاتًا بَلْ أَحْيَاءٌ عِنْدَ رَبِّهِمْ يُرْزَقُونَ (آل عمران: ١٦٩)

¹⁴⁵ Oliver Leaman, *Controversies in contemporary Islam*, Routledge, 2014, p. 13.

contrast, many of the Prophetic traditions, or *hadiths* as the second source of Islamic law after the Quran, are so controversial that some scholars, notably Western orientalist, when facing the deep inconsistency among the *ahadith* have rejected outright the hadiths as a reliable source for the study of Islam.¹⁴⁶ Jurisprudentially speaking, recorded historical events cannot be considered to be more reliable than the hadiths, because the hadiths were more rigorously collected, recorded and vetted than any of the histories that have come down to us. This said, even when a hadith item cannot be cross-referenced, an historical event will naturally be considered to be more dubious.

However, there are some exceptions, for example where even if there is not complete consensus regarding the meaning and value of historical events, they are still considered iconic elements of the religion. The Karbala incident is one such seminal moment which is deeply engaged with the question of martyrdom in Shia tradition. It is a widespread notion that in Shia tradition, martyrdom has a higher status than in other branches of Islam. This is primarily due to the centrality of the ‘tragedy of Karbala’ among the rites and commemorations of Shia Muslims. This makes a discussion of the relationship between the ‘Karbala incident’ and the concept of ‘martyrdom’ in Shia Islam important for the present work. The following discussion of this incident analyses whether it justifies ‘martyrdom-seeking’, which is an essential element in persuading people to participate in suicide attacks.

On the tenth day of Muharram (the first month of the Islamic calendar) in the year 61 AH (October 680 CE), a tragic event took place on the banks of the

¹⁴⁶ Nasr, *Islam*, pp.55-6.

river Euphrates at a place known as ‘Karbala’ in today’s Iraq. The large army of Yazid, the Umayyad Caliph of the time, besieged a group of travellers numbering less than a hundred and pressured them to pledge allegiance to the Caliph and submit to his authority. The small group resisted and a battle took place during which they were all killed. The killed consisted of 71 followers and family members of Hussein, grandson of the Prophet of Islam. By the standards of the day, the Karbala incident, involving a relatively small number of people, would appear to be insignificant from an historical point of view. The political authority of the time might have perceived that this incident would be recorded in history as a chronicle like hundreds of similar events which would then be forgotten over time. However, the events that occurred were to become a beacon for future generations of Shia Muslims.¹⁴⁷ Imam Hussein, the slain grandson of the Prophet in Karbala, became the symbol par excellence of martyrdom and is now referred to as the “leader of the martyrs”.¹⁴⁸ ‘Karbala’, and ‘Ashura’ in its turn, became the icons of martyrdom among many Muslims. The sacrifice of Imam Hussein has played a unique role in the promotion of martyrdom among not only the Shia but also some Sunnis as well. *Ashura* is commemorated annually by Shia Muslims around the world.¹⁴⁹ Each year *Arbaein*, or the fortieth day of the Karbala incident, is attended by millions of mourners and is considered as the largest human gathering within the world.

¹⁴⁷ Richard Bonney, *Jihad: from Quran to bin Laden*, Palgrave Macmillan, NY, 2004, p. 226.

¹⁴⁸ سيد الشهداء

¹⁴⁹ Ibid.

Richard Bonney describes the influence of the Karbala Tragedy on Shia Islam as pervasive and lasting and believes the concept of ‘martyrdom’ is deeply embedded in Shia culture:

Within four years [after the incident], Husayn’s [Hussein] grave at Karbala had become the site for wild and unprecedented expressions of grief, weeping and wailing for the suffering and tragic death of the grandson of the Prophet. To the extent that these events gave the Shias a martyrology, enabling the passions of Ali’s sons to be remembered in martyrdom plays (ta`ziyah) and permitting the community to indicate its willingness for martyrdom by displays of self-inflicted wounds, they served a long term purpose: the Shia perception of Islam is inseparable from the concept of martyrdom.¹⁵⁰

However Karbala, despite its importance, is not the focus of my discussion here. The relevant point is that some believe Imam Hussein knew that his refusal to pay allegiance, or *baya`h* (بیعه), to the Caliph would cost him his life. They conclude that, since Hussein was aware of the probable consequence of his refusal to pledge allegiance to Yazid, he was in fact “seeking martyrdom”.¹⁵¹ Consequently his refusal to submit to the ruling caliph, which he knew was inviting death, is considered by some to provide a legitimating precedent; evidence that may be adduced demonstrating the permissibility of suicide tactics.¹⁵²

¹⁵⁰ Richard Bonney, *op cit.*, p. 226.

آیت الله جوادی آملی: امام حسین(ع) سیاست کشور را بالا و پایین کرد، اول و آخر آن را سنجید، چندین بار فکر کرد که چه کند، دید هیچ راهی نمانده و هیچ چاره ای نیست جز اینکه با همه اعضای خانواده به طرف کربلا حرکت کند و همه آنها را به این صحنه ببرد، بعضی شهید و بعضی جانباز و برخی اسیر شوند تا مردم حقیقت موجود در جامعه را بفهمند و بدانند که بر سر اسلام و مسلمین چه آمد و چه می آید.

ریشه‌های تاریخی-نهیضت-کربلا <http://www.tabnak.ir/fa/news/366243/>

¹⁵² See: Amir Molla Mohammad Ali, *Mabani Fiqhi Amaliat Istishhadi* (Jurisprudential bases of self-martyrdom operation), Zamzam Hedayat Publications, 1385 S. H. (2006).

The reality is that, despite this arguably shallow popular notion that Imam Hussein put his life at risk voluntarily, the Karbala incident is not necessarily associated with martyrdom seeking. Rejection of paying allegiance to Yazid as an approval for the ‘martyrdom seeking’ of Imam Hussein can be applied to any other action which might be disliked by despotic rulers. When we consider the seriousness of the situation that confronted Imam Hussein, as the grandson of the Prophet and the spiritual leader of a sizable community of Shias, we see that he had no choice but to reject Yazid’s authority. Yazid was known to be a corrupt ruler and his policies were perceived as against the basic teachings of Imam Hussein’s grandfather, the Prophet of Islam.¹⁵³ As the grandson of the Prophet, Hussein’s allegiance would have conferred an unacceptable degree of religious legitimacy on Yazid’s unjust actions. This would have been a kiss of death for the message of Islam¹⁵⁴ because Yazid was widely known to be unfaithful and corrupt¹⁵⁵ and Hussein’s support would transcend the political sphere and affect the religious arena as well. Any pious person in the position of Hussein would have been expected to have done the same.¹⁵⁶ Placing responsibility for the martyrdom of Hussein on his and his companions’ shoulders is particularly unfair. The implication of such arguments is that Imam Hussein, in seeking his own martyrdom, was actually done a favour by Yazid who helped him to attain his goal. This kind of interpretation of the Karbala incident might serve its promoters by

¹⁵³ Masoudi, *Murouj al-dhahab*, Vol. 3, p. 77.

وعلى الإسلام السلام إذ قد بليت الأمة براع مثل يزيد
محمد باقر المجلسي، بحار الانوار، ج 44، ص 326.

¹⁵⁵ Ibid, Vol. 2, p. 71-72.

قال الحسين(ع): ايها الناس إن رسول الله قال: من رأى سلطانا جائرا مستحلا لحرم الله ناكثا لعهد الله مخالفا لسنه رسول الله،¹⁵⁶
يعمل في عباد الله بالاثم و العدوان فلم يغير عليه بفعل و لا قول كان حقا على الله ان يدخله مدخله.
محمدصادق نجفی، سخنان حسين بن علي، جامعه مدرسین حوزه علمیه قم دفتر انتشارات اسلامی، 1380.

inspiring the pity of their audience, but it obscures the socially heroic act of Imam Hussein's refusal to confer legitimacy on a corrupt political leader and preserve the ethical heart of the religion of his beloved grandfather.

There is much evidence that may be cited from historical sources demonstrating that Imam Hussein's movement was not suicidal but actually sought to avoid bloodshed. For instance, it is reported that Imam Hussein left his city Medina because it was no longer safe for him and he wished to avoid danger to his family and himself.¹⁵⁷ This runs against the notion that Imam Hussein placed his life in danger intentionally. On the day of 'Ashura' when the caliph's army surrounded Imam Hussein and his companions, he said "if you do not want me to go to the city of 'Kufa' then let me go to another safe place."¹⁵⁸ This clearly shows he was not intending to put his people and his own life in danger. Of course, Imam Hussein was unable to accept the government's demand that he stop doing his religious duty in protesting against the corruption of the ruling clique. Imam Hussein described the prospect of abandoning his campaign against corruption as against his dignity and announced that he was ready to pay the price if it was the only way of doing his duty, saying "... and now the wrongdoer son of the wrongdoer [the Umayyad Caliphe] has left me between swords and dishonor of submission and dishonor is away from us."¹⁵⁹ Still despite refusal of the government's

¹⁵⁷ Majlesi, *Bahar al-Anwar*, vol 44, p. 329.

¹⁵⁸ ان كنتم لمقدمي كارهين فدعوني انصرف عنكم

مسعودي، تاريخ مسعودي، جلد 4، ص 304

ألا وإنّ الدعي ابن الدعي قد تركني بين السلّة والذلة، وهيئات منا الذلة¹⁵⁹

محمد باقر مجلسي، بهار الانوار، جلد 45، ص 83.

demand, Imam Hussein did not commit any act of suicide, and it was the government who killed him.

There is further evidence that shows the Shia Imams regularly tried to avoid bloodshed as much as possible. Imam Ali accepted 'hakamyah' with Mua'wiyah only to prevent a civil war in Kufa which would have cost many lives.¹⁶⁰ Imam Hassan's transference of the caliphate to Mua'wiyah was again done to stop a running bloodshed. Imam Hussein acquiesced to paying allegiance to Mua'wiyah for the very same reason,¹⁶¹ and his leaving Medina was done for the same purpose.¹⁶² The fact is that with too much focus on the Karbala incident, over 50 years of Imam Hussein's life and the broader message of avoiding bloodshed has been ignored. Only the half day of 'Ashura' has become, and remained, the centre of attention. All other Imams in their turn also refused to engage in armed uprisings and even refused to accept political power gained at the point of a sword if it was offered to them.¹⁶³

To conclude, the event of Karbala cannot be used to support the use of the concept of martyrdom to justify suicide tactics. This is because the main claim that Imam Hussein's movement was suicide-seeking is not based on historical

¹⁶⁰ Masoudi, *Murouj al-dhahab*, Vol. 2, p.5.

¹⁶¹ Ibid.

¹⁶² In what is known as Imam Hussein will to his brother, Muhammad Hanafyyah, before leaving his hometown of Medina to Mecca, he clearly mentions that he wants to do 'amir bil-ma'roof but if the government and people refuse his invitation to good and avoiding evil he will stay patient not that he will fight with them:

إني لم أخرج أشراً، ولا بطراً ولا ظالماً ولا مفسداً، وإنما خرجت لطلب الإصلاح في أمة جدي، أريد أن أمر بالمعروف وأنهي عن المنكر فمن قبلني بقبول الحق فالله أولى بالحق، ومن رد علي هذا أصبر حتى يقضي الله بيني وبين القوم بالحق، وهو خير الحاكمين

محمد باقر مجلسي، بهار الانوار، جلد 44، ص 329

اشرا / <http://ar.lib.eshia.ir/11008/44/329/>

¹⁶³ Masoudi, *Murouj al-dhahab*, Vol. 2, pp. 78-79.

facts. Those who perpetrate the idea that it was are often averse to reasoned debate on this matter. Accordingly, the claim that martyrdom is an indissoluble and essential part of Shia Islam is not based on persuasive foundations. According to Daniel Brown, the main body of Shia scholars do not see the Karbala event as the seeking of martyrdom.¹⁶⁴

Martyrdom and the victim's rights

In addition to the above arguments against employing martyrdom for the justification of suicide tactics, there is another clear problem with labelling suicide terrorism as 'martyrdom'. The fact is that in the literature on martyrdom, too much attention is paid to the executer's reasons for his/her act, and this leads to the neglect of consideration of the victim's rights. Suicide terrorism is obviously consisted of 'suicide' and 'terrorism'. Even if it is the case that the executer of suicide terrorism has good intent and thus his/her genuine readiness to risk or sacrifice his/her life (act of suicide) is considered to have religious value, such a self-affirming mission does not allow one to violate others' rights, which includes the right of life above all else. Heeding others' right to life is so non-negotiable that one cannot endanger it even to secure his own life. Shia jurists, when explaining the question of avoiding risk to one's life, indicate that if one person orders another to do damage to a third party's properties otherwise he will get killed, the threatened party is allowed to do material damage to others to save his own life. Some jurists allow causal physical harm to the third party to save one's own life as well. But no jurist approves of endangering the lives of

¹⁶⁴ Daniel Brown, "Hasan al-Banna; the Art of Death", p. 157.

others' if a person is threatened with losing his own life, if he does not kill a third party. The interesting point is that even if the threatener orders the threatened to kill the threatener himself, on pain of death, the threatened person is not permitted to kill the threatening person.¹⁶⁵ Those who focus on the (so-called) good intention of the executer and neglect the victim's side intentionally manipulate facts to achieve their goals, which are otherwise ruled out by the imprecation to observe the sanctity of human life in Shia jurisprudence.

Previously the overwhelmingly accepted principle of 'accountability for the practical odiousness of the action' (اصل قبح فعلی) among Shia jurists rejected absolution for a bad deed by virtue of 'good intent'. A clear case of where an action is 'odious in practice' is when an innocent person's rights are violated. As we learnt, this principle is called '*qubh fe`li*', or accountability for the 'externalities, or negative consequences of an act. The above principle prevents deeds from being judged based only on an assessment of the intent of the doer. So, even if the concept of martyrdom could be employed beyond the jurisprudential field for justifying intention-assessed wrong actions, doing harm to innocents as a result of good intent receives no support from mainstream Islamic jurisprudence. Accordingly, the role of jurisprudence in the carrying out of supposedly good intent-based suicidal deeds should be considered preventive rather than permissive.

¹⁶⁵ Mahaqiq Hilli, *Sharaye` al-Islam*, p. 976.

Martyrdom and taqiyah

There is a well-known principle in Shia Islam which gives priority to the safety of a person even if he or she needs to hide the truth.¹⁶⁶ This concept is called *taqiyah* or ‘prudent dissimulation’. Although *taqiyah* is current among Sunnis as well, it has been used more extensively in Shia communities. Since the Shia have been in the minority in many parts of the Islamic world, to avoid hostile behaviour by the Sunni majority they have had, at times, to mask their true beliefs. The rhetorical question is: how one’s life, which is so important that a believer is advised to deny one’s faith to save it if required so, could be permitted by religious scholars to be so callously expended in a suicide terrorist attack that harms civilians who are illegitimate targets even in a legitimate defence?

Conclusion

Removing the check on a believer’s conduct as provided by mainstream Islamic jurisprudence, and ceding assessment of the moral value of an action solely to a judgement of the good intent or otherwise of the actor, creates so much room for litigating the outcome that it is difficult to enumerate all the possible options the believer has. Jurists not only cannot approve this situation, it is a core part of their responsibility to reject such intention-based approach adopted by the organisers of suicide tactics. The responsibility of jurisprudence is to limit options and provide certainty by acting as a guide

¹⁶⁶ Shaikh Murtada al-Ansai, *al-Taqiyah*, edited by Fares al-Hasun, Qaem Al Muhammad Institution, Qom 1412LH, p. 37.

التقيه هي التحفظ عن ضرر الغير بموافقته في قول أو فعل مخالف للحق

Accessible via: <http://ar.lib.eshia.ir/1>

45/1/37

and authority on the proper behaviour of believers. In this case, because of the ease of constructing a rationale for suicide tactics offered to an actor by the intent-based approach, there are endless options from which the believer can choose. This is clearly against the philosophy of jurisprudence which is intended to provide an authoritative check on a believer's actions. Since the role of jurisprudence is to regulate believers' conduct through strict rulings, the free heuristic intention-based approach is antithetical to the philosophy of jurisprudence.

When, as will be discussed shortly, there are strict rules of engagement on the battlefield stipulated by the jurisprudential authorities, how can it be argued that those same jurisprudential authorities could be persuaded to permit actions that harm innocent civilians in the course of suicide terrorist attacks (outside the battlefield), based only on the supposedly good intent inspiring such actions? The sensitivity of questions and problems concerning martyrdom has meant that despite overwhelming consensus among the Muslim community about the importance of the concept of martyrdom and the status of a martyr, if a person is indeed unanimously agreed to be one, there is not the same level of agreement when it comes to adjudicating actual cases. Often perpetrators of an incident are called martyrs by their supporters, but are called criminals by other Muslims. This is the case when the famous Lebanese Shia cleric, Seyyed Muhammad Hussein Fadlollah, the spiritual father of Hizbollah, referred to the perpetrators of the 9/11 attack and other al-Qaeda operations as criminals.¹⁶⁷

¹⁶⁷ Seyyed Muhammad Hossein Fadlollah, "Reformists' responsibility is to clarify ambiguities", Interview with Muhammad Javad Akbarain, accessible via <http://www.rahesabz.net/story/18772/>

To justify suicide bombing under the banner of martyrdom is unacceptable. From what was discussed above it may be concluded that the Muslim fighter who is motivated by the spirit of religious duty enters the battle not with the intention of dying but with the conviction that, if he should die, it would be for reasons beyond his control. As such martyrdom in Islam does not begin with suicidal intention, let alone the linkage of that intention with the killing of non-combatants as it is the case in suicide terrorism.¹⁶⁸ The question is that despite all the religious rulings against the use of martyrdom to justify suicide terrorism, why is this concept still quite popular among perpetrators of suicide terrorism? The simple answer to this question is that religion is not the only factor that plays a role in this regard. A combination of the devaluation of life and the elevation of death for a good cause can turn martyrdom into both a preferred and desirable action. It is regarded as preferable because of the worthlessness of what is lost in the extinguishing of a dark, and unbearable life.¹⁶⁹ It is regarded as desirable because of what is gained, which is the promise of guaranteed salvation and consequent entry into heaven. The following elements play a central role in the process of persuading one to endanger one's life in a suicide operation in the name of religion:

1. Dissatisfaction about the current situation
2. Hatred toward those who are perceived to be responsible for the situation (even indirectly civilians)

¹⁶⁸ Kamali, *Shari'ah Law*, p. 288.

¹⁶⁹ It is how Muslim extremists usually describe their societies which are ruled by authoritarian regimes.

3. A feeling of helplessness and the consequent fear resulting from the significant disparity between the (perceived) enemy's and one's own level of power
4. The darkness of the world and therefore the worthlessness of human life because nothing to look forward to down here
5. The faultlessness of the heaven and the afterlife
6. Guaranteed salvation promised by martyrdom.¹⁷⁰

Hasan al-Banna, probably having the above points in mind, calls seeking death as “the art of death”, or *fann al-mawt*.¹⁷¹ Prior to blaming Islam for the concept of martyrdom and, as such, responsible to whatever wrong is done in the name of martyrdom, there is a need for addressing the socio-political-cultural root causes that provide so many desperate persons who are potential volunteers for suicide operations and ready to die. This job, obviously, is not the focus of this research and should be subject for separate intensive multi-dimensional researches on socio-political-cultural roots of suicide terrorism.

¹⁷⁰ See: Mark Juergensmeyer, *Terror in the Mind of God; the Global Rise of Religious Violence*, University of California Press, 2003.

Also see: Daniel Brown, Hasan al-Banna; the Art of Death and Contemporary Muslim Ideologies of Martyrdom, In *Religion and Terrorism*, edited by V. Ward and R. Sherlock.

Also see: Veronica Ward, Martyrdom in the Three Monotheistic Religions: Historical Survey and Analysis, In *Religion and Terrorism*, edited by V. Ward and R. Sherlock, Exington Books, 2014.

¹⁷¹ Brown, “Hasan al-Banna; the Art of Death”, p. 159.

II. Retaliation as *intiqam*

Introduction

Retaliation is another concept which is used frequently by the perpetrators of suicide terrorism to religiously justify their actions.¹⁷² Muslim militants who resort to indiscriminate terrorism against civilians justify their action as a reaction to the wrong deeds of their opponents.¹⁷³ As such, and instead of showing the religious justification for their deeds, they simply focus on the deeds of their enemy and evaluate permissibility of their actions as being proportionate to the other side's actions. It is why a major portion of such groups' propaganda is solely focused on describing the dimensions of their enemy's actions and the pain it causes their fellow co-religionists. In answering why these groups attack their fellow Muslims if they care that much for them, as Pratt observes, such groups have a quite dualistic approach toward defining themselves which requires both "ideological exclusivism" and "inclusivist polity".¹⁷⁴ When they see the whole Islamic world as their realm of domain they only consider like-minded extremists of their own group as true Muslims. Then while they react to any incident happening in any corner of the Islamic world and justify their terrorism as reaction to it, they, at the same time kill other Muslims for not being 'Muslim enough'.

¹⁷² Osama Bin Laden, "God knows it did not cross our minds to attack the towers", The Guardian London, October 30, 2004. Retrieved May 25, 2010: accessible via <http://www.guardian.co.uk/world/2004/oct/30/alqaida.september11>

¹⁷³ Sheikh Yasin, the spiritual leader of Hamas: by these operations [suicide attacks against civilians] Israelis will feel the same pain that Palestinians feeling."

¹⁷⁴ Douglas Pratt, "From religion to terrorism" in *Religion and Terrorism* Edited by V. Ward and R. Sherlock, Lexington books, 2014, p. 84.

Religious roots of retaliation

In regarding the religious roots of retaliation there are three related Quranic verses that can be applied to the justifiability of retaliation in its broadest sense. Two are about ‘*qisas*’,¹⁷⁵ or retribution, and the third concerns *muqabelah be misl*,¹⁷⁶ or reciprocal action in the course of war.

Regarding the term *qisas*, it is one of three kinds of punishments permitted in Islamic jurisprudence when the third rank of rights has been violated. Jurisprudentially speaking, there are three categories of rights which, if breached, trigger punishment: God’s rights, the rights of the society, and rights of individuals. Punishments concerning the violation of God’s rights¹⁷⁷ are called ‘*hudud*’ or ‘divine rules’ and are therefore fixed. *Ta`zirat* are to punish those who breach the rights of the society and are decided case by case by judges. They are therefore flexible. *Qisas* is the right of the individual to ask for punishment or to forgive the one who has violated his/her rights. *Qisas*, to some degree, depends on the preference of the holder of the right. Of course the right of the individual to ask for punishment or to forgive the one who has breached his or her rights is not unlimited. Usually the holder of the right can forgive, ask for financial recompense [blood money], or suggest

¹⁷⁵ *And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous. (Q.2:179)*

And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers. (Q.5:45)

¹⁷⁶ *[Fighting in] the sacred month is for [aggression committed in] the sacred month, and for [all] violations is legal retribution. So whoever has assaulted you, then assault him in the same way that he has assaulted you. And fear Allah and know that Allah is with those who fear Him. (Q.2:194)*

¹⁷⁷ God’s rights are those fundamental rights of people such as “order” and “security” and also basic moral norms which without them believers are not able to live up to their belief.

a defined physical punishment which is pre-determined by the jurisprudential authorities for such cases. In the case of the rights of individuals, the Quran recommends forgiveness¹⁷⁸ although acknowledges the right to financial compensation or even proportionate physical punishment. Regarding ‘*ta`zirat*’ the Quran is silent or flexible.

Hudud al-Allah comprise rulings in the Quran which, in the eye of jurisprudential Islam, are fixed and all believers are obliged to follow strictly. Marital rulings are among those codes which have been repeatedly mentioned in the Quran.¹⁷⁹ In Islamic jurisprudence, ‘*hudud*’ are punishments for those kinds of crimes which undermine Islamic society from within and prevent it from fulfilling God’s rights. Such crimes include theft, adultery, unjust accusations levelled against innocents, and so on. Punishments of such crimes must be decided according to Sharia and therefore are fixed and non-negotiable according to jurisprudential Islam. Warfare is not included in *hudud*. Although *qisas* in Shia jurisprudence is mentioned in the book of ‘*hudud*’, it should not be confused with the primary meaning of *hudud*. As mentioned above *qisas*, as punishment for those who harm an individual, is left to the victim’s inclination and as such is (relatively) flexible. *Qisas*, because of its individualistic nature is entirely unrelated to warfare.

Another term in the Quran is *muqabelah be mesl*. Unlike ‘*qisas*’, ‘*moqabeleh be mesl*’ concerns retaliation in the course of war. Although supporters of suicide terrorism in some cases use the term ‘*qisas*’ to justify their actions¹⁸⁰,

¹⁷⁸ Q.2:178.

¹⁷⁹ Q.2:187, Q.2:229, 230, Q.4:13.

¹⁸⁰ See: Amir Molla Mohammad Ali, *Mabani fihi amalyat esteshhadi* (the jurisprudential bases of self-martyrdom operation), Zama zam الهدایت publications, Qom, 1385/2006.

the fact is that *qisas* cannot be linked to warfare and it is the term '*moqabeleh be mesl*' which might minimally relate to the subject of discussion here with conditions explained hereunder. I wish to distinguish between two opposite ways that 'retaliation' is used or can be used. One way is to use it equal to 'vengefulness', or unjust vengeance, as a pre-Islamic tribal habit of Arabs which has left its trace in today's Muslim societies as well. The other way is to use it as a just and proportionate retort. When we hear the term 'retaliation' in the language of extremists it might be different from what is used in more mainstream language. My preference is to call the first usage of 'retaliation' as *Intiqam*, a term with some similarities with retaliation and which has its roots in the pre-Islamic era of *jahiliyya* or Arabia's 'time of excessiveness'.

The term *intiqam* or 'blind revenge' has a negative meaning pointing to 'causing suffering out of hatred and anger' to random members of a community in retaliation for a harm received from a member of that community. Generally *intiqam* is opposite 'just' or retributive retaliation.¹⁸¹ Disproportionate punishment of the wrongdoer can also be included in the category of *intiqam*/unjust-revenge. *Intiqam*, as such, like other *jahili* unjust customs, is rejected by Islam¹⁸² because of being closely associated with the pre-Islamic tribal chauvinism of Arabia. Having this preliminary explanation regarding relation between 'retaliation' and '*intiqam*' in mind, in this section I will look at retaliation promoted by supporters of suicide terrorism as *intiqam* and as such rooted in pre-Islamic excessiveness of Arabia's tribalism and not an Islamic principle. I will show similarities and commonalities of

¹⁸¹ Kamali, *Shari'ah Law*, p. 268.

¹⁸² Q.5:8.

retaliation, as Muslim extremists promote it, with the culture of unjust revenge as found in pre-Islamic Arabia and illustrate how, as a cultural deficiency which has succeeded in marginalising the authentic teachings of Islam, it sits within Islamic teachings among such extremists. When something as obvious as the local dress of specific group can be promoted as religious dressing for quite culturally diverse groups¹⁸³ it should not be surprising to see a tribal cultural motif such as ‘revenge’ viewed as a religious concept as well. I will show some cases which support my argument in this regard hereunder.

Retaliation and the tribal culture of revenge

Unlike what has been portrayed of pre-Islamic Arabia, the decadence destroying pre-Islamic society of Arabia was not because of a lack of any virtues in that society. As Izutsu observes, it was actually selectivity, exclusivity, and excessiveness of virtues overshadowed by blind and chauvinistic tribalism which nurtured that decadence and not an absolute lack of such virtues per se.¹⁸⁴ While anyone outside the domain of the tribe lacked any rights and protection, kinsmen not only enjoyed full protection but deserved excessive sacrifice. ‘Blind revenge’ was the product of such biased

¹⁸³ We see that, for example, Daesh has introduced the clothing of some Afghans as an Islamic way of dressing for men in Iraq and Syria. It is while Syrians and Iraqis have their own local dresses. What is introduced by Daesh from a long shirt with two cuts on sides and an uncommonly short trousers with aggregated legs which is identical to some local Afghan men’s dresses as the Islamic dress for men, shows how short the way of turning cultural habits into religious entities could be.

The fact is that the first founders of today Muslims militant groups, who were fighting in Afghanistan in the 1980s against the Soviet Union, needed to hide inside the wider society by dressing in local people’s way and protect themselves from their enemy. Gradually this way of dressing has become ‘Islamic!!’ for some militant groups.

¹⁸⁴ Izutsu, *Ethico-religious Concepts in the Quran*, pp. 28, 31.

kinship.¹⁸⁵ Pre-Islamic Arab blood-kinship promoted a selfish attitude which demanded good only for one's own tribesmen. This is what Farah calls "chauvinistic clannishness", a translation for 'hyper *asabiyyah*'.¹⁸⁶ According to the jahili culture, befriending members of other tribes, whom they looked upon as inferiors, was considered to be beneath dignity.¹⁸⁷ This harsh inequality and excessive selfishness had torn Arabia apart. Islam's revolutionary concept of *tawhid* suggested an equal position to the creator and tried to change the worldview of Arabs of the time. According to the *tawhidi* worldview the only factor for making one a nobler person was his/her good deeds:

*O mankind! Lo! We have created you male and female, and have made you nations and tribes that ye may know one another. Lo! the noblest of you, in the sight of Allah, is the best in conduct.*¹⁸⁸

What I want to emphasize here is that the culture of suicide terrorism is in close relation with the culture of jahili rather than being an Islamic one. My argument is based on the fact that, as Izutsu observes, Jahiliyya is not a period of time that has passed away. It is rather a state of tribal honour which is against forbearance, patience, clemency, and freedom from blind passion.¹⁸⁹ The pre-Islamic era of Arabia is called 'jahiliyya' which in English is usually translated 'Age of Ignorance' supposing the 'jahl' is opposite 'ilm', or knowledge.¹⁹⁰ While in Arabic 'jahl' is against 'hilm' which means "the

¹⁸⁵ Ibid.

¹⁸⁶ Farah, *Islam*, p. 132.

¹⁸⁷ Ibid.

¹⁸⁸ Q.49:13

¹⁸⁹ Izutsu, *Ethico-religious Concepts in the Quran*, pp. 28-29.

¹⁹⁰ Shepard, *Islam*, p. 34.

moral reasonableness of a civilized man”.¹⁹¹ Islam from the very beginning defined itself as a moral reformation movement opposing to jahiliyya and replacing it with principles arising from spirit of “hilm”.¹⁹² Hilm is defined broadly as the pivot of all moral life. Jahl is a fierce passionate nature which tends to get stirred up on the slightest provocation and which may drive a man to all sorts of recklessness.¹⁹³ How familiar does this characteristic look when faced with fanatic extremists these days?

Loyalty or trustworthiness – which is related to the discussion here – for pagan Arabs, like many other virtues, was largely a matter of kinship by blood. Islam, by breaking all limitations due to the tribal pattern of society, put the virtue of faithfulness onto a wider basis, transforming it into a super-tribal virtue.¹⁹⁴ Loyalty to fellow tribesmen for pre-Islamic Arabia justified any wrong things against others. What we witness of cruelty committed by some Muslim militants against ‘others’ – both Muslim and non-Muslim – has an inherent similarity to the tribal chauvinism of pre-Islamic Arabia and therefore should be considered as *jahili* behaviour. What Islam suggested was a significant and radical breakaway in the form of the implication of just law equal to all subjects regardless of their tribal affiliation. It was a revolutionary improvement because prior to that even, proportionally, fair tribal laws were only applicable to members of the same tribe and anyone outside the tribe’s circle did not enjoy any right in the time of *jahilyya*.¹⁹⁵ What Islam tried to do was to eliminate the niggardliness of tribalism and expand these virtues to

¹⁹¹ Izutsu, op cit., pp. 28, 31.

¹⁹² Ibid, pp. 29-30.

¹⁹³ Ibid, p. 35.

¹⁹⁴ Ibid, pp. 86-88.

¹⁹⁵ Schacht, *Islamic Law*, p. 7.

include all humankind. This replacement of blood kinship with an inclusive approach embracing all people¹⁹⁶ not only confirmed positive intra-tribal precepts but proliferated them by removing tribal dogmatism, whilst at the same time highlighting the more fundamental values embedded deep in them such as justice, peace, right-doing, and egalitarianism.¹⁹⁷

The biased approach of tribal Arabs of the pre-Islamic era was understandable, of course not justifiable. The tribe was not only a source of protection but more importantly was source of identity. People were called by their tribe. History of Arabia is full of naming incidents by the tribes whose members were involved. During inter-tribal combats and in the individual swordplay, which usually would take place as warm-up for the main battle, two sides would proudly and extensively talk about the achievements of their tribes in previous battles instead of introducing themselves as individuals.¹⁹⁸ The tribe, with such a critical position, deserved any sacrifice by those who owed their identity to it. Manliness, as an Arab virtue, had to do with sacrificing for the tribe.

Today we are facing a new kind of tribalism which although, unlike the traditional one, is not exclusively based on blood kinship, is as still highly identity oriented as traditional tribalism was. While traditional tribalism was based on real and positive shared kinship the new tribalism is based on the negative shared threat, or perceived threat, towards a perceived common identity. What is promoted of the term ‘Umma’ by extremists is, in my opinion, ‘threat-based’ and as such is a ‘tribe-making’ concept. As such any action that could be interpreted as a common threat can bring

¹⁹⁶ Q.49:13.

¹⁹⁷ Farah, *Islam*, Barron’s, 2003, p. 58.

¹⁹⁸ Izz al-Din Ibn Athir, *Al-Kamil fi al-Tarikh* (Tarikh-e Kamel), trans. Seyyed Hossein Rouhani, vol. 2, section of “wars of pre-Islamic Arabs”, Asatir Publications, 1370/1991, pp. 582-807.

pieces of this giant global tribe, in the eyes of extremists, more closely together. On the other hand, the intensity of sacrifice, as is seen in suicide tactics, instead of bringing more righteousness crystalizes stronger linkage to chauvinistic tribalism in its negative meaning. It seems that today's suicide operations, which have a highly sacrificial characteristic to them, trace back to the old pre-Islamic tribalism. The new tribalism, aware of repulsive nature of tribalistic revenge, prefers to use retaliation which has a more acceptable resonance but which actually means the former, as will be shown below.

Evidence shows that suicide attacks conducted by a number of Muslim militant groups during recent decades (when Sunni militant groups dominated the field) were claimed to be retaliatory measures carried out under the umbrella of 'retaliation'. I argue that 'retaliation', in its tribalistic pre-Islamic meaning, is the concept which may explain the nature of many of these actions. The following briefly summarises the role of retaliation in at least some versions of suicide attacks, as stated by supporters of suicide terrorism or the perpetrators themselves:

1. 'Retaliation', as the main reason and/or justification for committing suicide bombing, has been cited by religious scholars supporting suicide attacks quite often. For example, the Association of the Islamic Scholars of Palestine '*Jameiyyat Ulama al-Falesteen*' in its statement of support for suicide attacks against Israeli civilians clearly declares that it does so in order that Israelis should feel the same pain and insecurity that Palestinians do.¹⁹⁹ Also Shaikh Ahmad Yasin, the spiritual leader of Hamas, has been quoted

¹⁹⁹ Molla Mohammad-Ali, *Mabani fiqhi amalyyate Istishhadi*, Zamzam Hedayat Publication 1385 S.A.H., p. 228.

as having said in reference to Israel: *As long as they target our civilians, we will target their civilians.*²⁰⁰

2. In addition to intellectual justification, many of those conducting suicide attacks also emphasize ‘retaliation’ as the main reason for their operations. Osama Bin Laden, pronounced the September 11, 2001, terrorist attacks to be in retaliation for Muslims’ suffering in Lebanon and Palestine. In a 2004 videotape speech addressing the American people, Bin Laden reveals his retaliatory intent by saying:

When you squander our security we squander yours... God knows it did not cross our minds to attack the Towers, but after the situation became unbearable—and we witnessed the injustice and tyranny of the American-Israeli alliance against our people in Palestine and Lebanon—I thought about it. And the events that affected me directly were that of 1982 and the events that followed—when America allowed the Israelis to invade Lebanon, helped by the U.S. Sixth Fleet. As I watched the destroyed towers in Lebanon, it occurred to me to punish the unjust the same way: to destroy towers in America so it could taste some of what we are tasting ...²⁰¹

As seen above, Bin Laden believes in punishment of the “unjust in the same [unjust] way’ which is clearly against the just reaction prompted by the Quran (5:8).

Muhammed Siddique Khan, leader of the 7 July 2005 suicide terrorist bombers in London, left behind an explanation as to why he and his three friends executed a

²⁰⁰ *Washington Post*, 9 June 2002.

²⁰¹ Osama Bin Laden, “God knows it did not cross our minds to attack the towers”, *The Guardian* London, October 30, 2004. Retrieved May 25, 2010: accessible via <http://www.guardian.co.uk/world/2004/oct/30/alqaida.september11>

series of suicide bombings that killed themselves and 52 other people. He used the same language as Bin Laden and justified killing innocent people as an act of retaliation:

Your democratically elected governments continuously perpetuate atrocities against my people all over the world. And your support of them makes you directly responsible... Until we feel security, you will be our targets. And until you stop the bombing, gassing, imprisonment and torture of my people we will not stop this fight. We are at war and I am a soldier. Now you too will taste the reality of this situation...²⁰²

The expression ‘our people’, repeated in different ways by both Bin Laden and Siddique Khan in their statements, is quite familiar for a tribesman. They see the world consisting of big tribes and they are ready to do whatever it takes to protect theirs. As such the nature of their suicide bombings, as they themselves have clearly asserted, is mostly concerned with maximizing the pain and discomfort of ordinary civilians and demonstrates the central role of *intiqam*, as vengefulness, in such attacks. Rantisi of Hamas expresses such goal explicitly: “we want to do the same to Israel as they have done to us.”²⁰³ As such, suicide tactics against civilians were a way of making innocent Israelis feel the pain that innocent Palestinians had felt. In cases that the targets of suicide operations are civilians then what has been claimed to be ‘retaliation against wrongs’ lacks any justice and as such is not but an act of blind revenge rather than an attempt to punish doers of previous wrong deeds as legitimate and just retaliation requires.

²⁰² http://news.bbc.co.uk/2/hi/uk_news/4206800.stm

²⁰³ Mark Juergensmeyer, *Terror in the Mind of God; the Global Rise of Religious Violence*, University of California Press, 2003, p. 75.

3. In addition to political and ideological motives, there is evidence available that some of the perpetrators of suicide attacks, directly or indirectly, have had personal motivations for exacting revenge. A good example is that which occurred following the Pakistani Army's 'Operation Silence' against the militants who took the trench in the Lal Masjid (Red Mosque). An escalation in suicide attacks in the wake of the Lal Masjid Operation can be directly attributed to this operation. From 1995 until operation of Lal Mosque in July 2007, 34 suicide attacks overall were recorded in the entire preceding decade in Pakistan while 43 suicide attacks were recorded in only the first six months following the operation.²⁰⁴ The intensity of the aftermath of the July 2007 siege of the Lal Masjid may also be judged by the fact that Pervez Musharraf, as commander-in-chief of Pakistan, directed the armed forces not to wear their uniforms in public.²⁰⁵ As soon as Operation Silence came to an end, security agencies warned that cities of Rawalpindi and Islamabad could be targets of a wave of suicide attacks. This was said to be because over 500 potential suicide bombers who had been studying at the Lal Masjid-run Jamia Hafsa and Jamia Fareedia *madrasahs* had not returned to their homes. Security agencies warned that potential bombers were hiding in several religious seminaries and mosques in and around the two cities and were ready to blow themselves up anytime, anywhere, to avenge the killing of their colleagues. Subsequent events proved those agencies right. Several weeks after the operation ended, an 18-year-old bomber killed 22 highly

²⁰⁴ (CMC) Conflict Monitoring Center Annual Report 2011: accessible via <http://cmcpk.wordpress.com/2012/01/01/significant-decline-in-suicide-attacks-in-pakistan/>

²⁰⁵ Amir Mir, Pakistan: The suicide-bomb capital of the world, *Asia Times Online* Sep. 16, 2011 accessible via http://www.atimes.com/atimes/South_Asia/MI16Df04.html

trained commandos of the Special Services Group (SSG) of the Pakistani army by targeting their mess hall, around 100 km south of the capital, Islamabad, on September 13, 2007. The bomber turned out to be the brother of a female student at the Lal Masjid-run Jamia Hafsa madrasah who was killed during the operation, carried out by Karar Company of the SSG.²⁰⁶

Incidents such as the Beirut October 1983 bombings, the U.S. 9/11 attacks, and the Iraq invasion are considered to be landmark events in the phenomenon of suicide attacks at the global level; but for Pakistan, the Lal Masjid operation was the turning point. After Operation Silence, Pakistan experienced around 10 times more suicide attacks in the following five years compared to the preceding 12 years. The year after the Lal Masjid incident, the number of suicide bombings in Pakistan multiplied further. In 2008, 895 people were killed and 1873 injured in 59 such incidents. There were 78 suicide attacks in 2009, killing 951 people and wounding 2361. The phenomenon peaked in 2010, when 1172 people were killed and 2204 injured in 51 such incidents.²⁰⁷ According to data compiled by the Islamabad based Conflict Monitoring Centre, militants carried out 41 suicide attacks during the year 2011. Six hundred and six people were killed and 1002 injured in those attacks. Fifty nine percent of the dead (358 out of 606) and 85 percent (856 out of 1002) of the injured were civilians. The army lost 33 of its soldiers, while 100 personnel of the Frontier Corp (a paramilitary force) and 54 policemen lost their lives in these suicide attacks. Fifty one suicide bombers were used to carry out 41 suicide attacks

²⁰⁶ Mir, *op cit.*

²⁰⁷ Ibid.

because in some strikes more than one human bomb was used. In 23 out of 41 attacks, the targets were civilians.²⁰⁸

Many of those who conducted suicide attacks in the years following the Lal Masjid incident were believed to have been students of the Lal Masjid religious schools or the relatives of those killed during Operation Silence.²⁰⁹ This fact demonstrates how the justification of retaliation coloured many of these crimes, which mostly targeted hospitals, churches, mosques, markets, schools and other public places in the name of waging jihad. Yet these acts killed and injured numerous innocent civilians.

4. The practice of revenge-seeking is socially accepted, and even considered to be a desirable behaviour among some cultures, especially those with strong ties to tribal honour codes and attitudes. Akbar S. Ahmed in his *Islam under siege* uses the ‘*assabiyyah* theory’ of Ibn Khaldun to explain why so many conflicts are rooted in “group loyalty”²¹⁰ which he calls the exaggerated, imbalanced, and obsessive form of *asabiyyah* as “hyper-Asabiyyah”.²¹¹ In such a confrontational context any act of dishonouring or perceived act of dishonouring is reacted by “revenge” to regain or maintain honour.²¹² The distorted and mostly negative notion of ‘blind honour’ pursued by such revengeful groups lacks many humanistic elements of the traditional concept of honour.²¹³ Ahmed puts the obsessive form of religious loyalty in the same category of the exaggerated tribal

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Akbar S. Ahmed, *Islam under Siege*, Polity Press, 2004, pp. 74-104.

²¹¹ Ibid, p. 14.

²¹² Ibid, p. 15.

²¹³ Ibid.

loyalty as subgroups of “group loyalty” which can promote acts of violence against the “other”.²¹⁴

From what has been learnt above we can say that Bin Laden, when he spoke the language of revenge looked quite similar to the pre-Islamic tribesmen who acted violently to defend the tribe’s honour: “...Our religion is under attack. They kill and murder our brothers. They compromise our honour and our dignity ...”.²¹⁵ Ahmed argues that in some cases including among the Pakhtuns of Afghanistan and Pakistan it is not unusual to paint tribal tradition with the colour of religious values while such traditions have their roots in ‘*pakhtunwali*’ or codes of Pakhtuns.²¹⁶ Revenge has a very central position in this tribal code of conduct. The passage of time does not affect the implementation of revenge. There is a Pakhtun proverb which quotes a Pakhtun who took revenge after a hundred years, remarking, “I took it quickly”.²¹⁷ If this social context and honour-based cultural practice of seeking revenge is ignored, no religious explanation can fully account for the nature of suicide terrorism in such environments.

In relation to Islamic jurisprudence with regard to retaliation, Islamic law has rejected attempts to frame the concept of retaliation in its pre-Islamic unjust way. Retaliation was replaced with ‘targeted punishment’ – a sort of religious rule of law – which was supposed to address only the wrong-doer himself, not his whole tribe or community. Retaliation in its pre-Islamic concept, by contrast, was often simply an explosion of collective anger and hatred preferably directed against the

²¹⁴ Ibid.

²¹⁵ John L. Esposito, *Unholy war: Terror in the name of Islam*, Oxford University Press, 2002, p. 24.

²¹⁶ Ahmed, *Islam under Siege*, p. 141.

²¹⁷ Ibid, p. 142.

main agent that had created the source of anger, but just as often, in practice, it was directed against whosoever was around. The characteristics of the recent and ongoing suicide attacks carried out by Sunni militants reveal the same characteristics and shows such operations are primarily about revenge out of hatred and anger.

It is important to recognise that those organisers of suicide attacks and their supporters usually distort a Quranic verse to justify their actions as religiously approved retaliation. Verse 194 of Chapter two in the Quran, which concerns the prohibition on fighting during the sacred months is often cited for this purpose. This verse extends permission for fighting back if believers are attacked during the sacred months, and affirms that exacting such 'reciprocal action' does not breach religious and moral rules: *[Fighting in] the sacred month is for [aggression committed in] the sacred month, and for [all] violations is legal retribution. So whoever has assaulted you, then assault him in the same way that he has assaulted you. And fear Allah and know that Allah is with those who fear Him.* (Q.2:194)

Verse eight of chapter five gives a clear rejection of any vengeful interpretations of the above Quranic verse: *... and do not let the animosity of a people prevent you from being just. Be just; that is nearer to righteousness...* (Q.5:8). As this verse indicates, believers are bound by observation to moral standards, and the wrong deeds of their enemies do not justify them to do wrong things to their enemies, let alone to innocent people. The history of the early stages of Islam is full of accounts of iniquities committed by the pagans of Mecca against the fledgling Muslim community. Pagans not only threatened the lives of Muslims and the Prophet himself, but even after the Muslims fled Mecca for Medina the pagans attacked Medina several times. Despite all this hostility toward Islam, and the trouble that

the pagans caused for the Muslims, the Prophet did not let his army take revenge.²¹⁸

When the Prophet returned to Mecca after around a decade of exile, and despite the suffering caused by the pagans of Mecca, in response to those who shouted the slogan “today is the day of revenge,” the Prophet asked that the Muslims replace it with the slogan: “today is the day of mercy”.²¹⁹

The following Quranic verse clearly rejects the justification of wrong actions in response to wrong deeds of the enemy, and requests that believers only cooperate in right acts: ... *And do not let the hatred of a people for having obstructed you from al-Masjid al-Haram lead you to transgress. And cooperate in righteousness and piety, but do not cooperate in sin and aggression. (5:2)*. This verse makes it clear that doing the wrong thing to innocent people in retaliation for wrong things done to Muslims is considered to be a ‘transgression’. Likewise, supporting fellow believers in the committal of wrong acts is against the Quranic principle of “prohibition of cooperation in hatred and aggression”.²²⁰

To sum up, arguably the agenda of the supporters of suicide terrorism is that of mostly blind revenge upon ‘the other’ who is regarded as responsible for all their sufferings. The concept of ‘the other’ in regards to vengeful agenda is quite broad and no one out of their tribe of identity is safe from their violence. Unlike the pre-Islamic concept of ‘tribe’, which was based on actual blood-kinship this new tribalism of fanatic extremists is based only on negative element of (perceived) shared threat. However, advocates of this new tribalism do not even have the few positive functions of the old tribalism of the pre-Islamic Arabia. They are incapable of offering the smallest solution to the tangible problems Muslims

²¹⁸ Yaqubi, *Tarikh*, Vol. 2, p. 45.

²¹⁹ Ibid.

²²⁰ و لا تعاونوا على الاثم و العدوان

currently suffer. They have introduced no single plan for curing poverty, illiteracy, health problems, corruption, backwardness, and injustice in the Islamic world. Instead, what they have drawn upon is the dissatisfaction of the Muslim masses toward the *status quo* of crippling corruption and their desperate demand for change.²²¹ What they have been successful to some extent is to blame ‘others’ for all these failures and to offer the one single response: ‘revenge’. It seems, despite all confusions created from misrepresentation of Islam by extremists and also the vast dissatisfaction among Muslims, mainstream Muslims do not approve unjust retaliation promoted by extremists. According to the result of a Gallup Poll research study between 2001 and 2007, undertaken in several Muslim majority countries, less than 7% of Muslims support violence against civilian ‘others’. The interesting point is that those Muslims who condemn violence against civilians refer directly to the Islamic teachings including Quranic verses, whilst those Muslims who support such violence without exception refer to political issues including foreign intervention and destructive policies toward Muslim lands.²²² At least a part of such support for violence can be interpreted on the base of *intiqam*, as unjust retaliation, because it is justified as a reaction to destructive policies of the other side.

Conclusion

While Shia militant groups mostly rely on the principle of martyrdom to justify their resort to suicide tactics, Sunni militants more often cite the principle of retaliation and revenge-seeking while using ‘martyrdom’ as reward. The fact is that the

²²¹ Mirbagheri, *War and peace in Islam*, pp. 24-25.

²²² See: John L. Esposito and Dalia Mogahed, *Who Speaks For Islam? What a Billion Muslims Really Think*, Gallup Press, 2008.

vengeful approach adopted by Sunni militants is not just a theoretical wrangle, but has become a real contemporary security concern for both non-Muslims and Muslims. In 2011, Sunni extremists accounted for the greatest number of terrorist attacks and fatalities for the third consecutive year. More than 5700 (of 10283) incidents were attributed to Sunni extremists, accounting for nearly 56 percent of all attacks and about 70 percent of all fatalities. When it comes to suicide attacks, the situation is even more shocking because Sunni extremists conducted 93 percent of suicide attacks and are responsible for the absolute majority of human losses caused by such attacks.²²³ With extremists hijacking Islamic teachings to justify their crimes, some might consider Muslims to be accessories to terrorism. The problem is not only limited to the negative impression that extremists have spread about Muslims and their beliefs around the world, but in the practical realm, Muslims are also the main targets of such crimes. The 2011 *Report of the U.S. Department of State on Terrorism* clearly identifies Muslims as the main victims of terrorism: “In cases where the religious affiliation of terrorism casualties could be determined, Muslims suffered between 82 and 97 percent of terrorism-related fatalities over the past five years.”²²⁴

²²³ *US Department of State, Country Reports on Terrorism 2011, accessible via <http://www.state.gov/j/ct/rls/crt/2011/195555.htm>*

²²⁴ *Ibid*

Part Two

Jurisprudence and Jurisprudentialism

Introduction to Part Two

A little knowledge is a dangerous thing (English proverb)

A precise understanding of divisions within Islamic faith is not only of the utmost importance for gaining a better grasp of current intellectual trends in the Islamic scholarship but it also can have specific practical benefits as well. These divisions are not only matters of intellectual debates, which usually may appear so, but also are playing an important and actual role in the way that believers see their religion and behave religiously. By following each of these divisions followers decide what the central tenets of their religion actually are, and also in which ways these tenets should be prioritized and deployed to order and guide the believers' conduct. Regarding our topic of research this means distinguishing between different understandings of Islam is essential for combatting terrorism effectively. This is because gaining a precise knowledge of any enemy is the first step for an effective struggle; an otherwise uncalculated action in fighting the wrong or supposed enemy may bring more harm than good. For example anti-terror forces targeting the wrong suspects (militarily or otherwise) is unconditionally a victory for the camp of the terrorists. Such ill-treatment of innocent people, who otherwise served no use for terrorists, can inadvertently help the terrorist campaign for recruiting new personnel in a way that no other means can help them. That being said in this part I am going to briefly introduce the main understandings of Islam and their relation to the current violence done in the name of Islam.

Chapter Five

Jurisprudential Islam and the battle of interpretations

Despite the notion that Islam forms a single monolithic entity the rich diversity of religious beliefs and Muslim cultures proves such a notion more a simplistic myth than a pervasive fact. The level of diversity among Muslims is to such a degree that some scholars have come to the conclusion that there are as many “islams” as there are “Muslims”.²²⁵ Then it is needless to emphasize that under the normative banner of ‘sameness’ seen as a monolithic Islam there are a wide range of variegated identities. Does the existence of such a significant level of variegation mean that it is impossible to talk about Islam, as one coherent entity, meaningfully? Is Islam regarded as a ‘homonym’ word covering clashing entities which have nothing in common? Or is there still a way to talk about Islam as one entity while recognizing all above variegations among its followers?

The best way to answer these questions is to refer to Muslims and see how they themselves see their religion. According to the PEW 2012 survey the world’s 1.6 billion Muslims are united in their belief in God and the Prophet Muhammad, and are bound together by such religious practices as fasting during the holy month of Ramadan, almsgiving to assist people in need, visiting the holy site of Mecca, and canonical prayers. But they have widely differing views about many other aspects of their faith, including how important religion is to their lives, who counts as Muslim and what practices

²²⁵ William E. Shepard, *Introducing Islam*, Routledge, 2014, p. 3.

are acceptable in Islam.²²⁶ From what the PEW's report shows, although Muslims are different in some aspects they still have enough commonalities to be considered as followers of the same faith. Such commonalities in the current Iranian circles of Islamic Studies are called *islam-e had-e aqalli* or 'minimal Islam' and are shared almost by all Muslims. These shared elements constitute of two categories. Firstly: 'fundamental beliefs' which in PEW's report are belief in God and the prophethood of Muhammad. Secondly: 'basic practices' of canonical prayers, fasting, almsgiving and pilgrimage which are famous as 'pillars of Islam'. No matter how non-practicing a Muslim might be almost all Muslims accept these two groups of elements as the heart of the religion. Although there is less or no inconsistency in the first category of elements (beliefs), regarding the second group (basic practices) the degree of actual fulfilment of the practices may indicate lack of acceptance which usually is only matter of practical adherence and not issue of acceptance. Then it is possible to talk about one Islam provided that we only have in mind this small shared elements famous as 'minimal Islam'. The following shape shows the position of 'minimal Islam' in relation with the wider scope of the religion:

²²⁶ "The World's Muslims: Unity and Diversity." PEW Research Centre, August 9, 2012
Accessible via: <http://www.pewforum.org/Muslim/the-worlds-muslims-unity-and-diversity-executive-summary.aspx>.

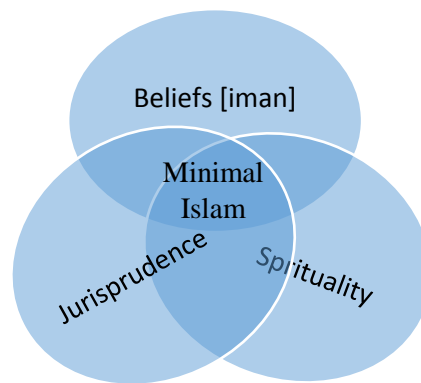


Figure 8 Minimal Islam

While, as we saw, it is almost easy to determine the minimal shared level of religiosity among Muslims it is not that easy to identify various differences among them. There are several ways for identifying and categorizing differences among Muslims. The most straight forward one is to analyze the word ‘Islam’ itself. Islam can be understood in three levels:

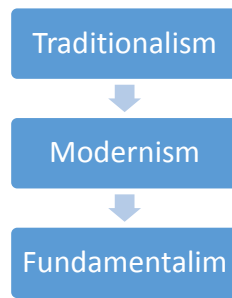
- 1- As submitting or committing oneself to God, essentially as an inward mental action though with outward consequences.
- 2- As a system of beliefs and practices believed to be ordered by God.
- 3- As a culture and civilization created by Muslims over the course of time.²²⁷

I will return to a modified version of this categorization later on when I make a clear distinction between three concepts of *iman*, *irfan*, and *fiqh*, and explain how these three concepts have formed three different versions of Islam each with their own worldview and outward consequences. In my own

²²⁷ Shepard, *Introducing Islam*, p. 2.

categorization the above first and second levels of Islam are seen respectively as the foundation for *kalami* and *fiqhi* Islams. I will not consider the third one Islamic because the non-Islamic elements which are followed by Muslims as separate from their religion should not be seen necessarily as a version of Islam. Of course if such cultural elements are seen by Muslims as part of their religion then it will be included in the second level. I, instead, will add a third dimension which is based on the role of pure spirituality and forms *irfani*, or mystical, Islam.

While the above categorization is based on the definition of religion there is another categorization which is context based. The context-based categorization of Islam divides Muslims based on their relationship with modernity as the dominating context of the time. There is no doubt that modernism has changed context of human's life significantly. As for Muslims, like all other subjects of modernity, according to this categorization it is Muslims' distance to modernity which defines their identity. Accordingly Muslims should be categorized as traditionalists, modernists, and fundamentalists. The relation between these three categories can vary but the main explanation for the relation between traditionalism, modernism, and fundamentalism is that while modernism is an antithesis of traditionalism, fundamentalism is the synthesis of modernism. As such fundamentalism is a reaction to modernism believing that modernism is spoiling society by weakening the moral values.



Modernization has its roots in western culture and thus can explain developments of the western world more adequately. However categorizing all groups around the world based on their standpoint towards this western phenomenon (modernism) looks too westernized. The fact is that differences among Muslims are rooted in their own history. While such a categorization might provide a more familiar explanation for the western audience it does not cover the Muslims' differences during the pre-modern era – of which a big part of such differences are continuing to play a significant role today as well. As it will be discussed shortly, a large part of the contemporary divisions among Muslims are actually a continuation of the same old differences in many respects.

The West has had its unique experience and although many lessons can be learnt by others who seek the same degree of development and success, ignoring this uniqueness which is characteristic of all human-related phenomenon, can even affect learning constructive lessons from it. Tariq Ramadan argues that while in a typical modern western society a day-to-day visibility of religion is close to zero, for Muslims following the fundamental principles of their religion is not considered as verging on excess but can easily be seen inside the frame of moderation. For him such a difference is simply because the histories, cultures, and reference points of the Islamic

world and the western world are not identical.²²⁸ At the same time for Ramadan following religion differently does not mean that moderate Muslims should give way to dogmatic and excessive interpretation of the religion and stop taking into consideration the current social and historical contexts which requires respect to human rights, gender relations and so on.²²⁹ Categorizing Muslims based on their degree of modernity can be misleading because being modern and liberal can have a different meaning in the Islamic context, Ramadan argues:

... People are quick, far too quick, to assume that because a woman or a man is religiously ‘liberal’ with regard to Islamic practices such as wearing the hijab or drinking alcohol, for instance, she or he will hold equally ‘liberal’ political views. In my experience, nothing could be further from the truth. There are innumerable cases of political personalities, intellectuals and civil society activists who are indeed Muslims with liberal views and practices but who publicly support the most hardline dictatorial regimes and/or the most violent resistance groups everywhere from Algeria to France. So moderation in religion cannot be correlated with its supposed political equivalent. In the western-generated analysis, however, there is a tendency to conflate these categories. ...²³⁰

Equating Muslim religious extremism and fanaticism with fundamentalism, which is a Christian reaction to its own context, can be misleading.²³¹ Therefore, and despite its widespread usage, this categorization is needed to be avoided because the Islamic religious context is quite different from its

²²⁸ Tariq Ramadan, “Good Muslim, bad Muslim.” *New Statesman*, Feb. 2010. Accessible via: <http://www.newstatesman.com/religion/2010/02/muslim-religious-moderation>.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Douglas Pratt, *The Challenge of Islam*, Ashgate, 2005, p. 143.

Christian counterpart.²³² Another very popular categorization of Muslims is based on the religious legal schools or *madhhabs* they follow.

Although many Muslims simply consider themselves as ‘Muslim’, and do not give their *madhhab* affiliation the same importance that they give to their religion, the fact is that many of them are aware of their *madhhab* and this awareness is increasing. Today there are five main Islamic *madhhabs* that most of Muslims, knowingly or unknowingly, follow one of them. These *madhhabs* are Maliki, Hanafi, Shafi`ei, Hanbali, and Jafari (Shia). There is no doubt that *madhhabs* play an important role in deciding the way that a Muslim performs his or her religious practices. However the fact is that many ordinary Muslims only suffice to performing a small portion of fiqh as the manifest of each *madhhab*. This small portion which is called ‘minimal fiqh’ only constitutes the pillars of the religion or *arkan* which are the four worship acts of canonical prayers, fasting, pilgrimage, and almsgiving in addition to declaration of faith or *shahada*. Many Muslims do not follow the whole range of jurisprudential rulings of *madhhabs* and many Muslims – including Sufis and followers of some sects – do not follow any *madhhab*. Thus categorizing all Muslims based on *madhhabs* is not inclusive and explanatory enough. There are some other categorizations for explaining differences among Muslims but none of them are as famous and also as pervasive as the above mentioned ones and therefore I do not mention them here.

²³² Ibid.

Differences in the nature of religiosity as the criteria for categorization

If the above mentioned categorizations do not clarify the deep and longstanding differences among Muslims then the question arises is there any other categorization that covers the old differences and is able to explain the recent challenges and developments? My suggested categorization, since it is directly based on the nature of religiosity of individuals, covers not only previous situations but can also explain recent and current developments as well. Some scientists believe that religion is rooted in psychological and/or social and/or epistemological needs of human.²³³

My categorization of Islam as a religion is based on this perspective with regard to the following preliminary points. Firstly the foremost of the above-mentioned three foundations of religion sees religion as rooted in human psychology. Religion as a psychological phenomenon can have both positive and negative faces. While for Freud, Hume, and Hobbes religion is a false belief rooted in human's fear of the unknown,²³⁴ for others feelings of awe resulted from sense of the presence of an unseen majestic power among devotees is the psychological root of religion.²³⁵ This aspect of religion is related to its spiritualistic functions and qualities as we will see. Secondly, religion as a reflection of human social nature is another main foundation of religion. Human beings, as social animals, live in groups. To make life in community stable and productive, and to avoid disturbing clashes, human society not only needs positive rules/regulations and peaceful solutions to

²³³ Veronica Ward and Richard Sherlock (eds.), *Religion and Terrorism*, Lexington Books, 2014, pp. 8-9.

²³⁴ Ibid, p. 8.

²³⁵ Ibid.

possible clashes, it also requires prospects for moving in one determined direction for achieving its agreed goals. Religion has always played an important role in building and sustaining social order in human societies, and as such religion has its roots in social needs of human society.²³⁶

Thirdly the human as the ‘rational animal’, in the process of thinking, as an ongoing and inseparable part of his essence, faces questions that take a lot of time and energy to answer. Some questions are too big to be answered through ordinary process of human thinking. The cognitive capacity of religion provides definitive answers for big questions about the universe, human existence and personal fate and so on. Religion, by answering such questions, helps form human worldviews and of course the worldview in its turn shapes the human moral values and consequently his conduct/behaviour.²³⁷

To relate our categorization of Islam to the above mentioned classification of religion it should be mentioned that Islamic society after the Prophet faced three major crises:

- 1- Crisis of too much worldliness and lack of spirituality.
- 2- Crisis of faith regarding ‘who is a true Muslim’, resulted from divisions within the *umma* known as *fitna* based on mutual accusations of impurity.
- 3- Crisis of social identity resulted from losing majority to non-Arab converts and also non-Muslim inhabitants of the newly opened lands after mass conquests in three continents of Africa, Asia, and Europe.

²³⁶ Ibid, p. 9.

²³⁷ William Sims Bainbridge, “The Religious Ecology of Deviance.” *American Sociological Review*, Vol. 54, No. 2, Apr., 1989, pp. 288-295, p. 288.

In response to these three crises the Islamic faith demonstrated its three; mystical, rationalistic, and jurisprudential capacities. The three mega-movements of Sufism, Islamic rationalism or *kalami* movement, and jurisprudential movement, not only brought up three main qualities of Islam but also permanently divided believers accordingly. Each camp developed its own religious knowledge which are: *Irfan*, *kalam*, and *fiqh*, and the result was the formation of three essentially different understandings of Islam famous as Irfani Islam, Kalami Islam, and Fiqhi Islam.²³⁸ The difference between these three camps are so deep that Mohsen Mojtahed Shabestari sees religiosity of followers of mysticism (*Irfan*) substantially different from followers of *kalam* and *fiqh* and vice versa.²³⁹ This categorization, despite its long history, is accepted and followed by many Muslims scholars today as well and this means it has kept its relevance to the current developments despite its capacity for explaining previous situations. For example this categorization is quite popular among Iranian Muslim thinkers, but with the Persian translation of these concepts such as *islam-e tajrobat-andish* for mystical Islam, *islam-e marafat-andish* for kalami or theological Islam, and *islam-e Shariat-andish* for jurisprudential, or fiqh-minded, Islam.

While this categorization of Islam has its root in the very first developments of Islamic faith it can also explain recent developments inside the Islamic faith and Islamic world. As long as Islam, as a religion, is continuing to provide answers for the psychological, epistemological, and social needs of its followers then this categorization will remain valid and explanatory. With

²³⁸ Mohsen Kadivar, *Hokomat-e Wilaei*, Nashr Nei, 1380/2001, p. 18.

²³⁹ Mohsen Mojtahed Shabestari, "Piramoun-e islam va democracy (about Islam and democracy)." Accessible via: <http://www.rahesabz.net/story/57596/>

regard to the naming of the second category, or kalamī Islam, it should be mentioned that I have chosen the appellation ‘theo-ethical Islam’ for this category. This naming serves to demonstrate simultaneous and equal regard toward both theological and ethical foundations of kalamī Islam. Because of the nature of this work, which is a study of question of jihad and its relation to suicide terrorism from jurisprudential perspective, I will briefly discuss positions of mystical and kalamī islams toward the question of widespread violence executed in the name of jihad and then will investigate position of jurisprudential Islam and its sub-categorizations in more detail. The following flowchart shows the structure of my chosen categorization and its dimensions:

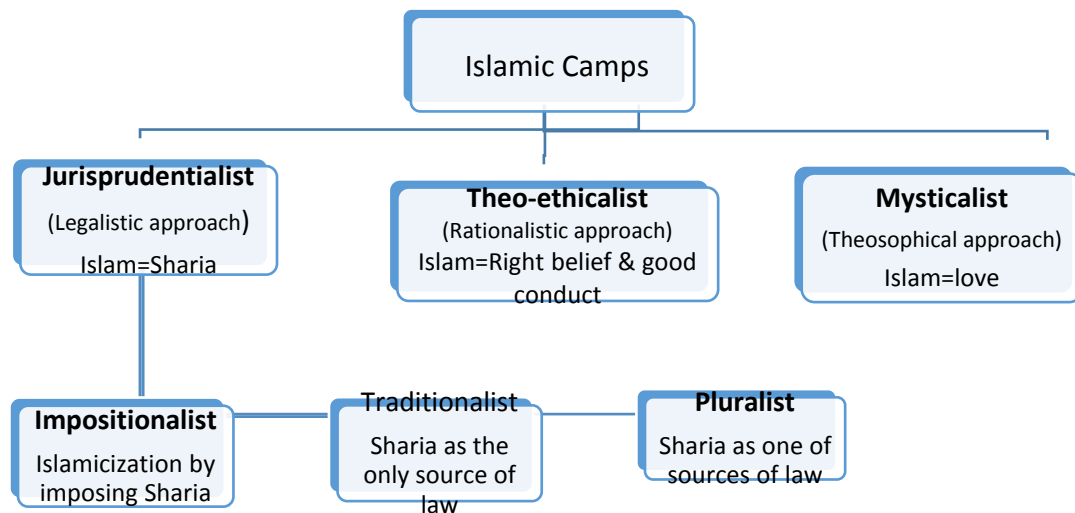


Figure 9 Islamic camps

Islamic camps and the question of violence

To combat violence, including terrorism, we need to know where this phenomenon, both ideologically and materially, is rooted and where it is fed from. Needless to say that any miscalculation about the nature and roots of

the current terrorism of the Muslim extremists not only leaves any counter-terror attempt fruitless, but it also (by aiming at the wrong targets) may create new challenges and threats. To combat the current wave of terrorism the anti-terror camp needs to demolish the social base of terrorism and for that they need strong cooperation of the mainstream Muslims. To gain the mainstream's support anti-terrorists should speak to the mainstream in its own cultural language and erase its concerns regarding the anti-terror camp's agendas. It is a fact that the extremists will continue to constantly monitor their opponents' actions and approaches and will try to find an excuse to fuel the suspicion of mainstream society toward the intentions of the anti-terror camp. The long history of colonialism/imperialism (colonialism as practice and imperialism as the idea driving the practice) makes job of extremists for fueling such suspicion even easier.

Losing the trust of the mainstream populace is of course the last thing that the anti-terror camp needs. To win a battle against an enemy such as terrorism first and foremost there is a need to win the hearts and minds of its social base. For that purpose a clear distinction between different divisions of that society is axiomatic. Such a distinction is essential both for selecting a proper communicating language and also choosing the right strategy to avoid targeting incorrect suspects. These two are vital for building trust with the mainstream society. To gain such distinction it takes a precise understanding of the nature of the issue –in this case the violence executed in the name of religion of Islam- and the actors and factors behind it.

Issues related to representation is another practical realm where a proper understanding of the internal divisions among Muslims can help to avoid

miscalculations and escaping costly policies based on wrong assumptions. As Pratt argues “true representation” has always been a major issue in Islam as it has been the case with its sister religions of Christianity and Judaism.²⁴⁰ Usually believers see their own understanding of the religion as the authentic and correct one. Muslims are no exception in this regard. In today’s Islamic world different perspectives are competing to gain legitimacy and leadership to guide the direction of the Muslim community.²⁴¹ Sufi movements see their version of Islam as the cure for the lustful and violent environment destroying human qualities and are seeking to revive their *tariqas*. Rationalist reform movements seek to purify the faith from customs of pre-modern societies and match it with the current condition and need of human society. Finally legalists are seeking to establish the Islamic state based on a highly idealised abstract conceptualisation of the *Sharia*. Needless to say that each movement sees itself as the true Islam and invites people to its way. We need to be aware of the nature of these movements and their internal clashes to avoid painting all Muslim activists with the same brush and treat them accordingly which, in certain circumstances, can have quite problematic consequences. If, as the mainstream media is eager to portray, major developments within the Islamic world are seen as anti-western there will be limited optimism regarding the success of any joint combat against violent extremism. On the other hand if these developments be seen (as they truly are) as an internal competition over supremacy and representation among different camps of Islam, then the outcome can be substantially different. On the contrary, if any development

²⁴⁰ Pratt, *The Challenge of Islam*, p. 3.

²⁴¹ Muqtedar Khan, *Washington Report on Middle East Affairs*. April 2001, Vol. 20 Issue 3, p. 82.

within the Islamic world is seen necessarily as anti-western and the wrong prescription is advised for confronting them, then the outlook for combating violent extremism can turn even darker. Any foreign attack against Muslims might easily lead to marginalization of fundamental internal controversies among them in favour of confronting the foreign threat. An outside threat has the potential to unite unlike-minded Muslims and force them to disregard their essential differences. Such a prioritization of resisting a foreign invasion is coherent to the benefit of the hardliners who have advantage in the use of violence as this may give them the upper hand and the louder voice.

When approaching Muslims' divisions we need to also be careful about misreading similarities and differences. There is, for example, one major confusion resulting from the commonality of a minimal level of spirituality, jurisprudence and creedal beliefs among all three camps of Islam which has created the impression that all three are the same with superficial differences. That is not the case in any way. For example while all three camps agree on the existence of spiritual elements embedded in the prescribed rites or *manasik*, the other two camps (excluding mysticism) do not see Islam as only a vehicle for spiritualism without strong outward dimension to it. Again, while all three camps follow the minimal outward rites, excluding the jurisprudential camp the other two do not see Islam as a set of rulings and commands. The same applies to the creedal rational discussions. While the rationalist camp sees the religion, as the mutazili thinker, al-Jahiz, argues, as a mere continuation of human reason with seeing revelation as only a new

tool without any superiority over reason²⁴² other camps do not allocate such a high position for reason. The other two camps either reject reason completely, as mysticism does, or limit it to merely a tool for discovering rulings of the religion as jurisprudential camp does.²⁴³ As practical result of misreading the similarities among Muslims of different camps, for example, some might consider any practicing Muslim inherently an extremist and the only tolerable Muslims for them are the “nominal Muslims” who do not have sincere belief in their religion.²⁴⁴ As a matter of fact, in many cases some non-practicing Muslims support violence in a much stronger way than practicing Muslims, maybe, because they care less for limitations laid down by religion.²⁴⁵

Owing to conflicting information about the internal differences and divisions among Muslims, these days it is not unusual to face quite contradictory comments about Islam. While some call Islam a religion of peace and therefore an essential part of the solution for human problems, some others see it as a part of the problem whose time has long passed and has nothing for humanity and perceives the faith as “the motherlode of bad ideas”.²⁴⁶ The reality is that although such observations look quite combative still they may enjoy a degree of truth (depending on which perspective the issue is observed from), nevertheless they cover only a part of the truth. In this part I have tried

²⁴² Caesar E. Farah, *Islam*, Barron's, 2003, p. 210.

²⁴³ Joseph Schacht, *An introduction to Islamic law*, Oxford University press, NY, 1982, Preface, pp. 34-35.

²⁴⁴ Sam Harris vs Fareed Zakaria on Islam - Are most Muslims extremists?, accessible via: <https://www.youtube.com/watch?v=BCM2rU7mFKk>

²⁴⁵ Tariq Ramadan, “Good Muslim, bad Muslim.” *New Statesman*, Feb. 2010. Accessible via: <http://www.newstatesman.com/religion/2010/02/muslim-religious-moderation>.

²⁴⁶ Real Time with Bill Maher: Ben Affleck, Sam Harris and Bill Maher Debate Radical Islam (HBO), accessible via: <https://www.youtube.com/watch?v=vln9D81eO60>

to provide a first hand and at the same time less common image of Islam. This image can not only help explain the past and present developments of Islam but can also help with demarcating solutions for current problems related to this religion – including the issue of violence waged in the name of jihad.

Mysticism and violence

Mystical Islam is based on the spiritual journey from the disparities of the material world to the unity of spiritual truth. The destination and final stage of this journey is called *wasl* or re-joining. The notion of ‘re-joining’ is rooted in the concept of *vahdat-e vojood* (وحدت وجود), which advances the concept of a unity of existence removing all separations and manmade zones of exclusion that appear to have hitherto been a condition of human communities. If all humans are viewed and treated as one essentially, philosophically, and ontologically, the pain and problems of one become the pain and the problems of all.²⁴⁷ Iranian poet and thinker, Saadi of Shiraz, express this notion in a compact way.²⁴⁸

*Human beings are members of a whole,
In creation of one essence and soul.
If one member is afflicted with pain,
Other members uneasy will remain.
If you have no sympathy for human pain,*

²⁴⁷ S. M. Farid Mirbagheri, *War and peace in Islam*, Palgrave, 2012, pp. 55-56.

²⁴⁸ Saadi, Golestan.

بنی آدم اعضای یک پیکرند
که در آفرینش ز یک گوهرند
چو عضوی به درد آورد روزگار
دگر عضوها را نماند قرار
تو کز محنت دیگران بی غمی
نشاید که نامت نهند آدمی
سعدی، گلستان

*The name of human you cannot retain.*²⁴⁹

Since most of conflicts are over material gain, rejection of materialism by mysticism is another principle which can contain conflicts and violence. Faqir (فقير) and *darvish* (درويش), which both means ‘the poor’ pointing to some Quranic verses announcing anyone but God as poor, is what Islamic mystics including Sufis call themselves. Although such titles point to spiritual aspects of human entity still indicate a clear detachment from temporality and worldliness more than anything else. By rejecting egocentricism and selfishness then the source for disputes and clashes will disappear, Sufis claim.²⁵⁰

Promotion of unconditional love is another aspect of mysticism which opposes violence. Since wars start in the minds of men then if the minds do not give way to anything but encompassing peace/love in all levels there will be no soldiers for power-thirsty warlords.²⁵¹ Such an encompassing peace does not recognize such a thing as ‘others’ which is the main root of disputes at the first level and conflict at the final stage. For Sufism humans are facing a greater issue which is finding their way in re-joining their spirit to its origin and escaping the darkness which is detaining the essence of human being which is light. Humankind is prisoner in the hands of his own self-desires and self-aversions which constructs a loveless and uncaring world.²⁵² Such worldliness has been quoted by Jesus to be like “*drinking sea water which makes the thirsty*

²⁴⁹ Qouted in S. M. Farid Mirbagheri, *War and peace in Islam*, Palgrave, 2012, p. 56.

²⁵⁰ Mirbagheri, *War and peace in Islam*, pp. 55-6.

²⁵¹ Ibid, p. 42.

²⁵² Ibid.

thirstier”.²⁵³ Fighting over worldly desires which redirect humans’ attention from their main issue, at least in theory, has no place in mysticism. The battle for mystics is inside the human being rather than outside.²⁵⁴ It is how Mirbagheri describes Islamic Gnosticism when quotes the following passage from Rumi’s book of Masnavi Manavi:²⁵⁵

*Oh honorable ones, we have slain the external foe,
A more forbidding enemy lurks down below;
Dislodging it, intellect and intelligence would not dare,
The inner lion is not the plaything of a hare;
It is a common lion that breaks the legion’s rows’
The true lion is he/she who breaks the inner foe.*²⁵⁶

If the interests of others are placed before one’s self interest, as Islamic mysticism preaches, then there will be no reason for a conflict of interests which is the root-cause of clashes among humans. The egoistic trait of individuals is recognized by mysticism as the source of disputes and the only way to contain it is to replace it with the real needs of human beings which is realizing his potential of being the theophany of the Divine Attributes which every human has the capability to achieve. This is because humanity has been appointed as the vice-regent of God on the earth and is a comprehensive

²⁵³Quoted in, Mirbagheri, *War and peace in Islam*, p. 45.

²⁵⁴ Arthur Buehler, *op cit*.

²⁵⁵ It seems that the following poem of Rumi is pointing to a tradition of the Prophet which puts “lesser jihad” against the “greater jihad” which is purification from self-desires:

اي شهان کشتيم ما خصم برون
ماند خصمي زو بدتر در اندرون
کشتن اين کار عقل و هوش نيست

شير باطن سخره خرگوش نيست
سهل دان شيري که صفها بشنکند
شير آن باشد که خودرا بشکند

²⁵⁶ Mirbagheri, *War and peace in Islam*, p. 42.

theophany of all Divine Names and qualities, and has been created in the universal Divine form. Every human, according to mystic discourse, reflects God and His glory in every aspect.²⁵⁷ Whatever problem is caused by a human being, including unjust violence, is because of suspension of the Divine qualities which have been embedded in essence of human. With regard to the concept of jihad in Islamic mysticism, jihad is not but merely ‘the war against the ego’ or *jihad al-nafs* pointing to a prophetic tradition.²⁵⁸

Theo-ethical Islam and the question of violence

When religion has become a source of dispute and conflict these days the ethical approach toward religion is believed to be able to stop believers from fighting others over religious differences or self-interests. Theo-ethicalism, as the ethical approach toward religion, has many of its tenets in common with Mutazilism. The Mutazili notion of ‘position between positions’ can be understood as moderation in all aspects including in time of conflict. It means balanced attention paid to one’s rights over, and one’s obligations towards, others, with respect to the material world and the spiritual world. It also means a balance between forgiveness and resistance, between prodigality and niggardliness, and a resolute aversion to extremism and terrorism in all their manifestations.²⁵⁹ For Wahbah al-Zuhaili, Islam advocates these values, not only among Muslims themselves, but also in their relations with other

²⁵⁷ Ibid, pp. 43-44.

²⁵⁸ Siraj ed-Din, *The nature and origin of Sufism*, p. 228.

²⁵⁹ Hashim Kamali, *Shari’ah Law*, p. 294.

communities and nations. Moderation, as balanced temperament and easiness (*wasatiyyah*, *itidal* and *samhah*) is inherent to peace if it is not peace itself.²⁶⁰

In theo-ethical approach toward Islam jihad is about living morally which is striving in the way of God by doing good and avoiding evil. Accordingly life itself is a constant jihad between the believer's passionate soul and the demand of the immoral desires within him. Therefore jihad is vigilance against all that distracts human beings from God and their exertion to do His Will within themselves as well as preserving the order and harmony that He has willed for them.²⁶¹ Therefore jihad means a God-oriented life²⁶² and is against an idol-oriented life. Among those idols which can replace God as center of focus can be power, wealth, ego, and of course ideology. These are often the main sources of disputes and conflicts and with controlling them the source of conflict will dry up, according to theo-ethicalism. By promoting morality, theo-ethicalism can act as a preventer of violence. At the social level the ideal order and harmony can be gained through a moral order which promotes a collective spirit of unity in a way that its product could be a society where its members are effectively brothers and sisters. Such a moral society will lack many of elements which provoke violence. Religion for theo-ethicalism is in the service of human beings and not the other way around. As such bringing peace and prosperity to humanity is (or should be) the ultimate goal of religion. Accordingly, and as the Iranian thinker Ali Shariati has commented, “a

²⁶⁰ Wahbah al-Zuhaili, quoted in *Shari'ah Law: an Introduction*, Mohammad Hashim Kamali, Oneworld Publications 2008, p. 294.

²⁶¹ Nasr, *Islam*, pp. 96-7.

²⁶² Say, “Indeed, my prayer, my rites of sacrifice, my living and my dying are for Allah, Lord of the worlds”. (Q.6:162)

«قُلْ إِنَّ صَلَاتِي وَنُسُكِي وَمَحْيَايَ وَمَمَاتِي لِلَّهِ رَبِّ الْعَالَمِينَ» (انعام/162)

religion's success is dependent on the success of its adherents.”²⁶³ If a religion brings peace among people it is a successful one and vice versa.

Due to the centrality of the concept of ‘justice’ and also the role of ‘reason’ in theo-ethicalism, from the theo-ethical point of view any kind of violence and use of force including war must be based on being ‘just’. It is the human common sense which decides what ‘just use of force’ is. Regarding the question of ‘jihad’ from a theo-ethical perspective, it could be said that, the same rule of ‘just use of force’ applies. As such the use of force for just causes is not necessarily of a religious nature whether it be called jihad or anything else but should meet the criteria for ‘moral use of force’. Thus jihad, in its militaristic form, might be supported because of its service to the good and rejected otherwise by theo-ethicalists. As such, for theo-ethicalism, in the case of armed conflict if ‘jihad’ stands for ‘just war’ then it is accepted and if not then it is rejected. This is unlike jurisprudence which looks at who is involved in the conflict rather than what the cause of conflict is. According to fiqh, in an armed conflict in the name of jihad, the Muslim side is right and the other side is wrong and it does not change even if the Muslim side is the invader and the non-Muslim side is defending itself.

Regarding suicide terrorism again the same rule applies. Since terrorism is against innocents it is rejected as being ‘unjust’ regardless of its form. But if a specific use of force, including use of suicide tactics, is justifiable according to the concept of ‘just war’ it seems it is difficult to assume that it is automatically

پیشرفت هر مذهبی بستگی به پیشرفت پیروان آن مذهب دارد. ²⁶³
علی شریعتی، عرفان، برابری، آزادی، حسینیه ارشاد، 1357، ص 2.

Accessible via: <http://www.negarstan.com/free-download/e-book/1057>

ruled out by the principle of ‘just use of force’. Unlike theo-ethicalism that looks at the cause (whether is just or not) and pays less attention to the form, the classical jurisprudence –as will be discussed shortly- rejects suicide tactics unconditionally. Therefore it could be said that theo-ethicalism, unlike many other issues, in this specific case has a more flexible stand in favour of violence because it does not reject suicide tactics unconditionally. Thus it could be said that, according to theo-ethicalism suicide operations, like any other form of violence, should be judged not by their form but by their cause. Nevertheless, according to theo-ethicalism what is currently done by Muslim extremists using suicide tactics against civilians is rejected because it is unjust and not because of the tool (suicide tactics) employed. Jurisprudence condemns these acts as well but, unlike theo-ethicalism, does so initially only because of suicide attackers use the wrong tactics.

Due to the importance of the concept of ‘just war’ in the theo-ethicalist approach towards violence, I briefly mention the main requirements of just war. Although the notion of just war comes from the Latin term of *jus ad bellum*, justice of war, and is supposed to cover this part only, nowadays elements of *jus in bello*, or justice in war, and the conduct of warfare is included in ‘just war’ as well. There are different requirements for a just war. The following ones are almost the most important and at the same time inclusive of elements of both just cause, and the just way, of waging war:

- 1- All peaceful alternatives have been exhausted before war is waged.
- 2- The war be in response to a severe wrong action.
- 3- The war be waged by a legitimate authority.

- 4- There be a reasonable chance for success of war to stop or punish the wrong doer.
- 5- A proper level of proportionality has been taken into account by the waging of war in the way that any unnecessary harm be avoided.²⁶⁴

In the Quran there are verses that support these five elements of 'justice of war' and 'justice in war' and put even more restriction on utilization of force. The most explicit verses in this regard are: Q.8:61, 2:190-193, and 22:39.

Before addressing position of jurisprudential Islam regarding the ongoing violence done in the name of jihad I would like to, briefly, touch on the reason for popularity of the 'jurisprudential language' including among the Muslim violent extremists. I believe this is a side effect of the 'rise of jurisprudentialism' as will be discussed hereunder.

²⁶⁴ Mirbagheri, *War and peace in Islam*, pp. 128-129.

Chapter Six

Jurisprudentialism as a modern phenomenon

Introduction

Schacht believes that it is impossible to understand Islam without understanding Islamic law.²⁶⁵ For him Islamic law is the core and kernel of Islam, whilst theology has never been able to achieve a comparable importance in Islam.²⁶⁶ Some scholars have described Islam, besides Judaism, as a “religion of law” and perceive Christianity as “religion of creed”.²⁶⁷ The importance of Islamic law, in its turn, proportionally gives significance to the Islamic jurisprudential camp as the self-proclaimed custodian of Islamic law. While for all three mystical, theo-ethical, and jurisprudential camps, the Will of God – as the purpose for creation of human being – has a central position, each camp’s understanding of God’s Will is different from others. For mystical Islam the re-joinment of the human spirit to the Divine Spirit is God’s plan for human beings. Based on the belief in human as created in the image of God, theo-ethicalists see God’s Will for human being acting as reflection of God as a moral existence. For Islamic jurisprudential camp following God’s Will means submission strictly to the Laws of God. As such, it can be said that, for jurisprudential Islam there is a shift from centrality of God Himself, which is embedded in notion of *tawhid*, toward centrality of outward practice in general and fulfilment of the religious law in particular.

²⁶⁵ Schacht, *Islamic law*, p. 1.

²⁶⁶ *Ibid.*

²⁶⁷ Shepard, *Introducing Islam*, p. 146.

Something that might appear surprising is the question of why other camps of Islam do not follow the jurisprudential in following God's Law if they believe in God as the jurisprudential camp does. Such a surprise would make sense if there was an agreement among all camps regarding what the Law of God actually is. While only a very small portion of the Holy Book of Islam might have the potential to be interpreted as legal codes, jurisprudential camp considers human attempts to derive rulings regarding every possible action of human beings as the Law of God and consequently sacred. It is obvious that if the other camps would accept such ordinary human findings as sacred they would follow them as jurisprudential camp does – but they don't. While *fiqh* or jurisprudence, as a human attempt in finding divine Will, is not considered as binding for the other camps, for jurisprudential camp Islam (as a *din* or 'godly way of life') is not but following the Laws of God as decided by jurisprudence.

While 'jurisprudential Islam' might look rigid comparing to the two other camps of 'theo-ethical' and 'mystical' islams still an even more rigid interpretation of Islam has emerged during the last two centuries. Due to contextual developments in the recent history of Muslims which are mainly consequences of 'Western colonialism/imperialism', 'excessive legalism' or Jurisprudentialism, as a modern political movement with a rigid attitude toward the faith and rejecting any reform, is gaining the upper hand against the traditional camps of Islam. In this chapter I will discuss reasons and consequences of emergence of jurisprudentialism in the current history of Muslims.

Era of jurisprudentialism

Regarding the popularity of mystical, theo-ethical and jurisprudential camps among Muslims it is to say that there are durations in the history of Islam when it seems

each camp has had a stronger presence in the public sphere. Abdulkarim Soroush divides the history of Islam into four eras: jihad and establishment, order through the implementation of law, flourishing of free thinking and arts resulting from success in the previous two eras, and finally the era of historical vacation for Islamic thought following the defeat in front of the Mongol invasion and also recent colonialization.²⁶⁸ I agree with Soroush that the relations between the general situation of Islamic world and the position of intellectual trends among Muslims is more of a causal one rather than a mere incidental simultaneity. However instead of believing in causal relations between the domination of each of the three camps and situation of the Islamic society, the former as cause and the latter as effect, I believe this causal relation is the other way around. Islamic history, according to the situation of Islamic world, can roughly be divided into three main eras: potency, stagnation²⁶⁹ and corruption. As such, it was the reality of the time which gave way to the domination of each camp and not vice versa.

As we learnt before Islam has rationalistic, spiritualistic and legalistic potentials, and it depends on the believers' needs and wills to have their own interpretation of Islam based on each of these potentialities. In other words although each of the rational, spiritual and legal teachings of Islam serve different needs of believers and, more or less, all of these teachings have their roots in the Book and the Sunna as the determining sources of the religion, still the axial role of each of these teachings in Muslim societies depends on factual conditions of the time. Because of the nature of each of these teachings, the living conditions of Muslim

²⁶⁸ Abdulkarim Soroush, *Wake up; it the time for refreshing thoughts*. Accessible via: <http://drsoroush.com/fa/>

²⁶⁹ In comparison to the former era of the 'Golden Age' in which the Islamic world was known as a scientific-led, free-thinking thriving society.

communities might suit one of these teachings and rebut the rest at the same time. As will be explained hereunder, this has been the case during the history of Muslims. We discussed that the Islamic world has experienced three main durations each characterized by specific conditions:

1-Era of potency (635-1250) characterized by glorious achievements and successful conquests in Asia, Europe and Africa. This self-confidence resulted in consecutive successes that opened that the way for what was by that time a free-thinking, scientific-led and thriving Islamic culture and civilization that made a significant impact on Europe.²⁷⁰

2- Era of stagnation (1250-1750) characterized by comprehensive devastation as a result of massive destruction caused by the Mongol Invasion. Despite some political achievements by Ottomans, Safavids and Moghols in this time frame, Islamic world is far away from being a scientific-led free-thinking society as was the case in the first era.

3-Era of corruption (from 1750 onward)²⁷¹ characterized by a cultural perplexity in the aftermath of modern colonialization and western imperialism.

The first duration was dominated by a flourishing of science and free thinking. Such an approach, rooted in rationalism and realism of successful and strong society of believers, marginalized spiritualism and legalism. The “golden age” of 800-1200 is the pick of duration of domination of science and free thinking rooted in the

²⁷⁰ Ilias Bantekas, “The Disunity of Islamic Criminal Law and the Modern Role of Ijtihād”, *International Criminal Law Review* 9 (2009), pp. 651–665.

²⁷¹ Although colonisation of Islamic lands by European powers started in 17th century but it was around mid 18th century (more specifically 1757 CE), when the Brits gained dominance over India both militarily and juridically in addition to their already established economical domination, that full colonisation started in its true sense. Hasting Plan of 1772 was the official announcement of this era.

rationalistic teachings of Islam.²⁷² This is the duration that Bernard Lewis praises it as one of the most majestic parts of human history: “For many, many centuries the Islamic world was the world's greatest, most open, most enlightened, most creative, most powerful civilization.”²⁷³

The second duration was dominated by a spiritualism rooted in passivism as a reaction to the vast destruction following the Mongol Invasion and belief in the shallow brevity of all material achievements.²⁷⁴

The third duration is dominated by a rigid legalism. Since our center of focus here is on jurisprudentialism I will explain this latter duration in more detail. There are two ways to look at the domination of Islamic camps throughout history: the trend created the situation or the other way around. Regarding the domination of legalism in the Islamic world in our recent era Sarah Chayes, in her book ‘Thieves of State: Why Corruption Threatens Global Security’, believes in the second analysis. She argues that foreign intervention has fostered corruption and corruption in its turn has led to a quest for strict legalism as the cure throughout the Islamic world.²⁷⁵ Chayes contends that in many places rigid moral codes are put forth as an antidote to the expansion of corruption and consequent collapse of public integrity.²⁷⁶ She reveals that canonical political thinkers such as John Locke and Machiavelli, as well as the great medieval Islamic statesman Nizam al-Mulk, all named corruption as a threat to the realm. Corruption can decay a society from within. A deep and

²⁷² Kamali, *Shari‘ah Law*, p. 278.

²⁷³ David Gates, Fast chat: Bernard Lewis, *Newsweek* 138.22 (Nov 26, 2001): 12.

²⁷⁴ Kamali, *Shari‘ah Law*, p. 278.

²⁷⁵ See: Sarah Chayes, *Thieves of State: Why Corruption Threatens Global Security*, W. W. Norton, 2015.

²⁷⁶ Book review, <http://carnegieendowment.org/2015/01/19/thieves-of-state-why-corruption-threatens-global-security>

organized corruption regulated by formal bureaucracy under influence of foreign powers, which Chayes terms it as “kleptocracy”, drives indignant populations to extremes; ranging from revolution to militant puritanical religion: “People are becoming more devoted because they are more and more frustrated with the government,” a local human rights activist told Chayes. “They are turning to God for recourse.”²⁷⁷ Governments in such countries, so often dismissed as weak or failed states, are in fact powerful and organized — but for crime rather than social services “whose core activity is not in fact exercising the functions of a state but rather extracting resources for personal gain.”²⁷⁸ She calls such corrupt governments with foreign enablers as “criminal kleptocracy”.²⁷⁹ Gallup’s 2008 survey in the Islamic countries and the pattern of request for implementation of Sharia as the cure for the extensive corruption, which will be discussed shortly, proves the same point raised by Chayes.

Regarding the relationship between colonialism/imperialism and the recent rise of the dry legalism (jurisprudentialism) it is worthy to note that colonizers, as any other dominant power, needed to implement an order which serve their interests the best. At the beginning, and partly because the colonizers’ interests were largely focused on commercial profit, they did not significantly interfere in native legal affairs until about the late 18th century.²⁸⁰ Hallaq describes this turning point as follows:

As “law and order” constituted the backbone of colonialist administration, the colonizers needed a unified system of law that

²⁷⁷ Carlos Lozada, Book Review: Do corrupt governments breed political violence? Review of "Thieves of State: Why Corruption Threatens Global Security" by Sarah Chayes, *Washington Post*, January 16, 2015. Accessible via: <http://www.washingtonpost.com/news/book-party/wp/2015/01/16/does-a-corrupt-government-breed-political-violence/>

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Hallaq, *Islamic law*, pp. 89, 92.

facilitated their absolute control over the colonized societies – therefore they did not confine themselves to controlling only trade regulations... The gradual introduction of the Western educational system proved itself instrumental not only in facilitating the legal transformation but also in accelerating the latter's dissemination and extending its cultural roots deeper in the new Muslim soil... The Westernization of education was both the prerequisite to, and the means of, naturalizing the new imperial culture without which no hegemony would be viable... By the middle of the nineteenth century, it was a rare Muslim country that had escaped surrendering its political and juridical powers to foreign nationals and, particularly, in favour of European states. Gradually European forms of education facilitated the ousting of Islamic law's legists through the ready supply of a new Westernized elite in whose interests it was to promote the Western institutions upon which it depended.²⁸¹

The fact that Western powers and the Westernized elite, with each others' help, were taking control of public institutions in the Muslims countries one after another left the Muslim masses hopeless. Serial defeats from Europeans in different fronts, especially in cultural front, and the incompetency of Muslim rulers in cutting this chain of failure widened the gap between the ruling elite and the Muslim masses. Muslim governments not only lost their wars to Europeans but more importantly lost the trust of their own subjects and consequently their loyalty. To cover the costs of the lost military campaigns these governments needed more resources and relied on the taxation of their subjects in this regard. The higher government's taxation became the more dissatisfied tax payer masses turned. This was the last nail in the coffin for the relationship between the Muslim governments and their subjects.²⁸² On the other hand the more dissatisfied the Muslim intellectual elite became with

²⁸¹ Hallaq, *op cit.*, pp. 89 & 92.

²⁸² *Ibid.*, p. 94.

their own failed governments the more they were attracted to the victorious party's culture and the more Westernized they became. As a result of wasting their scarce resources on military campaigns against Europeans (thereby losing the trust of the intellectual elite and the support of the masses), the weaker the Muslim governments became the harsher their domestic policies against their own subjects turned, and thus the more fragile the state-society relations developed. In gaining new sources for rebuilding their destroyed military capabilities, the behaviour of the ruling elite (out of a desperation following repeated defeats from foreigners), became so fierce that they cared less for many established social morals. In this regard they did not respect religious properties allocated to *waqf* and their related wealth and incomes. This in its turn damaged the religious legitimacy of the Muslim governments even further.²⁸³ Losing the trust and support of intellectual and religious elite left such Muslim governments vulnerable both against foreign pressure and also internal revolts.

In addition to political effects, the severe financial hardship, resulting from the loss of massive investments in failed military campaign against foreign interventions, stopped the Muslim governments from funding religious teaching centers and paying the religious teachers and administrators' salaries which led to the closure of many religious teaching centers. This in its turn not only affected the ongoing legitimization of the ruling elite but also left the local culture defenceless in front of foreign dominating culture. The mosques, and the madrasas along with them, appeared to many observers to stand on the brink of total collapse.²⁸⁴ The absorption of the *waqfs* into the central administration weakened the situation of the now

²⁸³ Ibid, p. 96.

²⁸⁴ Ibid

weakened class of *ulama* who had shown the greatest resistance towards foreign domination.²⁸⁵ Stripped off of the protection of the *ulama*, the ruling elite became quite vulnerable before the resentment and distrust of the tax-paying subjects. This made resistance to foreign domination even harder for the Muslim governments.²⁸⁶

As a Shia dynasty Iranian Qajar is an exemplary case where serial defeats against British and Russian Empires led it to abandoning investment in religious centers and public infrastructures. Even comparing to the short-lived ‘Zand Dynasty’, Qajars left no significant trace of themselves in the major Iranian cities regarding building new mosque, madrasa, bazar, bridge, bathhouse, caravansarai and so on. On contrast they treated masses so brutally that even today Iranians calls coercive policies as ‘Zell ul-Sultani’. Zell ul-Sultan was the Qajar governor of Esfahan and is famous for burying those who could not pay their taxes alive in a wall to become a lesson for others. He not only did not add anything to the already available infrastructures of Esfahan including 162 mosques, 137 governmental offices and palaces, 48 madrasas, 273 public bathhouses and 12 graveyards but sold lands belonged to backyards of such infrastructures.²⁸⁷

The dismantling of Islamic law and the escalation of corruption

By 1900 Islamic law in the vast majority of Muslim lands had been reduced in scope to the area of personal status – including marriage, child custody, inheritance, and gifts.²⁸⁸ The Islamic laws connected to personal status were saved from the death

²⁸⁵ Ibid

²⁸⁶ Ibid.

²⁸⁷

https://fa.wikipedia.org/wiki/%D9%85%D8%B3%D8%B9%D9%88%D8%AF_%D9%85%DB%8C%D8%B1%D8%B2%D8%A7_%D8%B8%D9%84%E2%80%8C%D8%A7%D9%84%D8%B3%D9%84%D8%B7%D8%A7%D9%86

²⁸⁸ Hallaq, *Islamic law*, p. 115.

blows which faced other Islamic laws by virtue of the fact that it was of no use to the colonial powers as a tool of domination.²⁸⁹ Even this disinterest was turned into an advantage, Hallaq argues: “colonialist Europe and its academics promoted the idea that the personal law was sacred to Muslims and that, out of sensitivity and respect, colonial powers left it alone.”²⁹⁰ To resist Western political and military hegemony, the state had to adopt modern technology, modern culture and modern institutions. Modernization in its turn led to economic and other forms of dependency on one Western power or another, and in the 1950s and 1980s on the Soviet Union as well. To free themselves of the grip of colonialism Muslim states adopted modern institutions and cultures that led them to be influenced by the colonialists even more.²⁹¹

Due to the cultural strength of the colonizers, for the first time in the history of Islam the outsiders’ domination over Muslims was not only militarily and Islam’s cultural values were questioned deeply by the rival culture of the victorious outsiders. Despite sympathy to the culture of the colonizers by Muslim intellectual elites, since the Muslim masses were not ready to replace their own culture with the dominant culture of colonizers, a damaging vacuum was formed as a result of the absence of Islamic law and the failure of assimilation to the Western culture. Weakness in the local culture, without replacement of the victorious culture, brought ‘indifference’ among subjects and social indifference brought vast corruption in all levels. What can stop corruption, as a disease which decays the society from within and stops it from functioning, is ‘rule of law’ based on a strong

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹¹ Ibid.

and coherently functioning legal system. Since the victorious culture has not been absorbed by Muslim masses the laws based on the colonizers' culture were not internalized by the colonized populace. In the absence of any demand for the implementation of the culturally unfamiliar laws of the colonizers by the Muslim masses, the ruling group enjoyed a free hand.

Although the colonizers' culture was deemed to be superior in fact the laws they imposed on their subject colonized nations aimed to serve their own interests.²⁹² In addition to the problematic nature of introduced laws by colonizers there was an even bigger problem with the implementation of such laws. In the absence of a public demand for fair and impartial implementation of culturally borrowed laws, the ruling group treated such laws quite selectively to maximize its own interests. The ruling elite had become quite short-sighted because it needed to realize its interests in the shortest time possible before it faces the next *coup d'état*, foreign invasion or internal revolution. The time for such ruling groups was quite tight and they needed to collect as much money in the shortest time they could.²⁹³ Even if the nature of the borrowed/imposed law was not problematic and the law was exactly the same that was implemented in the colonizers' own countries, its incomplete and selective implication in the colonized societies by Muslim ruling groups would produce different outcomes. While the implementation of such laws in the colonizing countries was to control powerful in the colonized countries the same, apparently, flawless laws were used as a tool to exploit masses. Dissatisfaction toward the situation attracted the attention of the oppressed subjects toward the malfunction of the ruling laws. To escape such a corrupt situation the replacement

²⁹² Hallaq, *Islamic Law*, p. 151.

²⁹³ *Ibid.*

of the law (as the blamed source for all this misery) became popular. This was because the ruling law was seen as a tool of domination for the colonial powers/corrupt rulers with no use for the colonized/oppressed populace.²⁹⁴

Rise of jurisprudentialism: Fatwa replacing taqwa

With the spread of corruption in the Muslim countries, interpreted as a consequence of the domination of the invading culture and its law, the Muslim puritans or *Salafis* emerged by placing great emphasis on fiqh and its positive law as a replacement for the perceived corrupting law of the colonizers. While influential within Muslim societies generally the rise of the age of legalism, as a reaction toward the crippling corruption, had a deeper influence on the religious circles and this pushed legalism even further.²⁹⁵ This can be seen in the teachings, for example, of Muhammad Ibn Abd al-Wahhab of Arabia (d. 1792) and Dan Fudio (d. 1817) of Nigeria, who gave a fresh impetus to conformity and imitation of the fatwa and rulings of the classical jurists. In their effort to purify society, the Salafis went too far in their excesses and injected rigidity and dry legalism into the educational system of the religious seminaries which in turn fostered even more rigidity. With the spread of this rigid legalism, Islamic civilization thus changed focus from an emphasis on spiritual awareness or *taqwa*, as characteristic of the post-Mongol era, to a penchant for legalism based on legal edict or *fatwa*.²⁹⁶ The consequence has been the decline of spirituality and the rise of extremism and intolerance in many parts of the Islamic world under the influence of this new movement.²⁹⁷

²⁹⁴ Hallaq, *Islamic Law*, p. 151.

²⁹⁵ Kamali, *Shari'ah Law*, p. 279.

²⁹⁶ Ibid.

²⁹⁷ Kamali, *Shari'ah Law*, p. 279.

Early nineteenth Century is the milestone in the rise of the legalist movement although this movement has its roots in the teachings of a radical 14th century scholar, Ibn Taymiyya (d. 1328). Islamic legalism or what is known as ‘Sharia-oriented polity’ or *siyasa shareiyya*, as calling for implementation of Islamic law, is after domination of fiqh on all aspects of human life including politics and even can include formation of “Sharia State” which its main function is “enforcement of Sharia”.²⁹⁸ Thus the right term for this movement is ‘jurisprudentialism’ as an absolutist tendency in Islamic juristic thought. Rule of jurisprudence in this trend targets externality at the expense of meaning and substance of Islam.²⁹⁹ As such ‘jurisprudentialism’ is a political movement with total emphasis on the fiqh-based identity of Islamic society and polity.³⁰⁰

Naturally, jurisprudentialism, as a Salafi movement which claims to see its ideal in the *salaf al-salih* or the past pious, is expected to have a strong connection to the past history of Islam, namely system of caliphate. The irony is that, contrary to what it might have looked like, the caliphate was not concerned with the implementation of Islamic law. The maximum religious role for caliphate was the preservation and protection of religion, and as such caliphate was not an ‘Islamic state’ as extremist (impositionalist) jurisprudentialists call for it today.³⁰¹ To claim originality some branches of jurisprudentialism call for a new caliphate as their ideal system of governance. The reality is that Jurisprudentialism was actually a declaration of the failure of a political “caliphate” and its replacement by a “Sharia-oriented policy”

²⁹⁸ Ibid, p. 7.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ibid.

rather than a call for its revival.³⁰² Thus, Sharia-based polity (or more accurately governance of Islamic law) is a concept created by Ibn Taymiyya in 14th century, although this notion did not find notable support until early 19th century efforts to challenge the Ottoman dynastic caliphate. Ibn Taymiyyah emphasized that the Quran and Sunnah did not contain any reference to caliphate as an organizational model or a system of government, and since the rightly guided caliphate had only lasted for thirty years, he ignored the hollowed theory and rhetoric of caliphate and called attention to the Sharia and a Sharia-oriented policy as governance of the Islamic law.³⁰³ The Wahhabi movement of 19th century Arabia that was based on Ibn Taymiyya's thought placed additional emphasis on the Sharia-based identity of Islamic governance and gave the jurisprudentialism of Ibn Taymiyya a significant lift.³⁰⁴

Even then, jurisprudentialism as making the Sharia (in its narrow meaning of Islamic law), as a defining element of an Islamic government and state, was not taken seriously until the 19th century. Ibn Taymiyya's theory of Sharia-based polity or *siyasa share'iyya* was only one of the proposed ways out of the destruction and stagnation following the Mongol Invasion. The mere proposal of *siyasa share'iyya* by Ibn Taymiyya should not confuse us into thinking that Ibn Taymiyya's era was actually the start of jurisprudentialism and that as soon as legalism was introduced by Ibn Taymiyya it gained dominance. Ibn Taymiyya's theory was put on standby until early 19th century when Wahhabism was its first user and of course its practical pioneer. Theoretical expansion of *siyasa share'iyya* took an even longer time until

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Ibid.

it was given prominence in the second half of 20th century by Seyyed Qutb (d. 1966), Abul Ala al-Mawdudi (d. 1979), Muhammad al-Ghazli (d. 1992) and Yusuf al-Qaradawi who saw the Islamic state essentially as a state committed to the enforcement of Islamic law.³⁰⁵ As such focus on the implementation of Islamic law (or what is famously called Sharia-compliance), is fairly a recent phenomenon that emerged after the domination of colonialism. Even after being introduced in early 19th century *siyasa shareiyya* did not find strong advocates in other parts of the Islamic world other than Arabia until the disruptive dismantling of the Ottoman Empire in early 20th century.³⁰⁶

The overly legalistic tendency of jurisprudentialists has been embraced at the expense of the spirit of Islam and its moral and devotional teachings on matters of personal conduct. This tendency is manifested in the way that Islamic law is often presented as the core and kernel of religion and the essence of Islam itself to the exclusion of other nodal points. This is an exaggeration which does not find support in the Quran and Sunna. It is questionable whether Islam was meant to be as much of a law-based religion as it has been presented by jurisprudentialists.³⁰⁷ Jurisprudentialism places total emphasis on conformity to rules and presents Islam as a law-based religion or ‘nomocracy’.³⁰⁸ This serves to distract attentions away from the meaning and purpose of Islam, and the natural integration of its values into one’s personal conduct. Some might argue that there is no reason to worry about jurisprudentialism as a valid interpretation of Islam beside other interpretations. The problem is that jurisprudentialism is quite absolutist and rejects any other

³⁰⁵ Kamali, *Shari‘ah Law*, p. 1.

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ Ibid.

perspective. The literalist tendency of jurisprudentialism furthers its emphasis on conformity to rigid rules at the cost of the main ethical and spiritual dimensions of Islamic teachings.³⁰⁹ Such an approach is quite destructive. This is why Imam Ali considers people following such an approach as “ignorant ritualist”³¹⁰ or *jahil al-mutinassik* and dangerous to the message of the religion.³¹¹

Another problem with jurisprudentialism is that it, in fact, serves as a serious hindrance for the development of the Muslim societies which are under its influence. Contrary to the claims made by jurisprudentialists that their proposed legalism is a sign and source of empowerment, in my opinion, it is actually more a sign of weakness and a blind reaction which worsens the situation by neglecting the realities of the times and imposing archaic ways onto new situations. Dogmatic and blind compliance to the ancient legal findings of past generations of less adequate societies imposed by jurisprudentialism is the last thing a society needs to improve. Another subordinate difficulty associated with jurisprudentialism is that for impositionist jurisprudentialism – as the most extremist version of jurisprudentialism – ‘rule of jurists’ is an essential and inseparable part of Islamic governance. Governance for jurisprudentialism is focused on the observance of Islamic law in a dogmatic fashion at the expense of concern for accountability, popular political participation, justice and fundamental rights.³¹² As such jurisprudentialism is a major obstacle in the path towards democratization as

³⁰⁹ Ibid, p. 6.

³¹⁰ جاهل متنسك

ابن ابي الحديد، شرح نهج البلاغه، ج 20، ص 284

³¹¹ Ibn abil Hadid, *Sharh Nahj al-Balagha*, Vol. 20. P. 284.

³¹² Kamali, *Shari‘ah Law*, p. 8.

the only sustainable solution for combatting corruption by creation of governmental transparency and the rotation of the ruling elite.

Post-colonialism quest for cultural heritage and the question of jurisprudentialism

Islamic jurisprudentialism, to a great extent, hides itself behind the legitimate quest for cultural heritage in the colonized societies including Islamic ones. There is a significant difference between reviving local cultural heritage in a positive manner to create self-awareness among people with imposing outdated and primitive prescriptions of the past for today complicated challenges under the name of Islamic law. As we showed before, colonialism during the nineteenth and twentieth centuries marginalized the local cultures in an attempt to convince the Muslims (and others) of the inadequacy of their own heritage and their inability to meet their needs in the post-industrial age. Not only ordering home decoration and personal dress was influenced by the invading culture but also European laws replaced the local customs in almost all areas of public law. The Islamic resurgence of the latter part of twentieth century was expressive of a desire on the part of the Muslim masses to retain and restore their own heritage.³¹³ Such a desire by Muslim masses to return to themselves and their heritage has been misrepresented by jurisprudentialists to mean dogmatic and blind compliance to ancient legal findings of past generations in the name of Islamic law. In addition to the quest for cultural heritage, public demand has also grown over the years for the reform of government. The fact is that the long series of *coup d'état* by despotic military elites have ruled Muslims for much of the post-colonial period.³¹⁴ What is recently showed itself in the popular

³¹³ Hallaq, *Islamic law*, pp. 89-96.

³¹⁴ Kamali, *Shari'ah Law*, p. 8.

revolutions famous as ‘Arab Spring’ should be understood in the context of an urgent need for political reform and not solely as a religious movement.

As history provides ample evidence, Muslims were successful when they were internally coherent and independent.³¹⁵ For Kamali current situation is no different from the past ones in this regard:

There are new challenges now and Muslims need to dig deep into their own resources and exercise imagination and initiative to find workable and coherent solutions to their current problems... Regarding their religious heritage Muslims need to take stock of what needs to be done to make it more relevant and resourceful for a system of governance through statutory law and constitutions that guarantee accountability, popular participation, justice and human rights... While Muslim reformists reject *taqlid* [imitation] and ask for free thinking reproduction of *taqlid* in new names and forms can be a challenge for them in their way for prescribing a way out of stagnation and desperation. The imitative ‘tradition of imitation’ that for centuries dominated Islamic scholarship was reinforced by colonialism, which gave rise, in turn, also to a neo-*taqlid* of a more inimical variety.³¹⁶ This was the indiscriminate imitation of the constitutions and laws of Europe that the colonial regimes so avidly encouraged, nay imposed, on their former colonies including Muslims. The distortion wrought by this manner of importation obviously sowed the seeds of what was to follow in 19th and 20th centuries. The consistent story of failed constitutionalism and democracy in the Muslim world is necessarily linked with those distortions which robbed Muslims of confidence and initiative and eventually made them feel incapable of taking charge of their own affairs and planning their own future while keeping their own cultural heritage.”³¹⁷

³¹⁵ Ibid, p. 308.

³¹⁶ Ibid, p. 303.

³¹⁷ Kamali, *op cit*, pp. 303, 308.

The Muslim quest to preserve their cultural heritage, rule of law and the demolition of corruption is not aimed against any third party. Of course if third parties support corrupt and despot rulers in the Muslim countries this might be understood as an unfriendly approach toward these oppressed nations. What is expected from others is that they do not make the already difficult way of Muslim societies toward democracy and cultural reintegration more challenging by misrepresenting the main message of the Muslim masses by confusing it with what is done by a group of criminals. The ugly face that the powerful media portray from Sharia, jihad and other Islamic principles is so destructive that the public audience have no choice but to hate these principles. When Muslim masses, for example, ask for Sharia the outsiders (having the distorted image of it in their mind) might easily expand their hatred toward Sharia to those who ask for its implication – which is quite natural. This in its turn may victimize Muslims in those societies where they are minorities or justify a violation of the rights and national borders of the Muslim majority countries by foreign powers at their whim. When Muslim reformists are responsible for providing an interpretation of their religion compatible with human rights and democracy the global media needs to stop reflecting a distorted image of Muslims. To return to the example of the Sharia: when the quest for Sharia is actually the quest for rule of law, which is a major defect in Muslim countries, this perspective should be reflected by the media rather than portraying it as Muslims supporting violence. According to Gallup's findings for most Muslims the Sharia means "rule of law" rather than any rigid findings of archaic jurists. Gallup's recent survey shows that the quest for Sharia is popular within Muslim societies where corruption is rampant such as Egypt and Pakistan, while in Turkey for instance where corruption is much more limited then only a small minority of less than 10 percent

ask for rule of Sharia.³¹⁸ Gallup interviewers, through deep survey, found out that what Muslims expect from implementation of Sharia in fact is not but ‘rule of law’ which its lack is destroying their lives and societies.³¹⁹ Unfortunately this is not the image that the mainstream global media is broadcasting of Muslim societies these days.

Shia jurisprudentialism

From a Shia juridical perspective there can be two different approaches toward Islamic law: literalist conformity or rationalist interpretation. This is continuation of the same old division of *ahl al-ray* and *ahl al-hadith* among Muslim jurists. Those belong to the modern camp of literalists, whom we call them jurisprudentialists, in their turn have their own differences. Despite the fundamental commonalities, not all jurisprudentialists suggest the same tactics for the implementation of their views. Shia jurisprudentialists, according to their practical perspectives are divided into: traditionalists, pluralists and impositonalists. In our times, the protagonists of Islamicization, especially the radical factions among them, have once again taken legalism as the principal theme of their mission, shown by their persistent demand for conformity to the juristic legacy of Islam and restoration of the Islamic law.³²⁰ As their ideal, while theo-ethicalists suggest an ethic-based society and mysticalists promote a love-based society, Shia jurisprudentialists in their turn support a fiqhi-based society and polity. Shia jurisprudentialists, as those who advocate creating a fiqhi-based society, are divided into three groups:

³¹⁸ See: John L. Esposito and Dalia Mogahed, *Who Speaks For Islam? What a Billion Muslims Really Think*, Gallup Press, 2008.

³¹⁹ Ibid.

³²⁰ Kamali, *Shari'ah Law*, p. 6.

Traditionalist jurisprudentialism

This group despite its belief in fiqh-based society, rejects forming a government in the name of Islam in the absence of the Shia Imams. Since ordinary believers (non-Imams) do not have genuine access to the truth and are capable of mistake then nobody is entitled to rule in the name of Islam, traditionalist jurisprudentialists argue. Instead, they suggest focusing on the implementation of religious rulings rather than becoming engaged in government directly. For them no matter who is ruling a Muslim society he must be asked to implement as many Islamic rulings as possible. It could be said that according to Traditionalist Jurisprudentialism there should be a job division between ruler and faqih. Faqih does not interfere in politics but demands the ruler to fulfil fiqh rulings. The more ruler executes fiqh or religious rulings the more is safe from the faqih's criticism and enjoys his support, but this support is temporary and changeable: it is not unconditional or permanent.³²¹

Pluralist jurisprudentialism

Contrary to what the title might suggest, pluralism in this respect is not an absolute one including pluralism in principles of fiqh as well but is only limited to level and form of implementation of fiqh. In pluralist jurisprudentialism, like other jurisprudentialist approaches, truth has been revealed through the holy text and the traditions of the Prophet and the Imams, therefore people cannot contribute in determining the religious rulings. However they are still entitled to decide the level of ruling of jurisprudence and of course whether they want the rule of jurists or not. Unlike the first and third approach, which will be discussed shortly, in Pluralist Jurisprudentialism 'law' and 'jurisprudence' are not the same. In order for

³²¹ Davood Firahi, *Fiqh wa siyasat dar Iran moaser* (Fiqh and politics in Contemporary Iran), Nashr Nei, 1391/2012., pp. 12-13.

the law to be able to organize intra/inter-societal interactions and rule the society, it needs to be explicitly accepted by people. Unlike law, fiqh is decided somewhere else and is needless of any public approval. To overcome this paradox, the mechanism which is offered by pluralist jurisprudentialism regarding solving this heterogeneity between law and fiqh is a localized version of democracy which is called Islamic democracy. In Islamic democracy people (and actually their elected representative in the parliament) decide which religious rulings they want to be implemented and for how long. Then only those religious rulings that pass the democratic law-making process could be implemented temporarily as long as the people want them. As such the only laws passed are qualified to rule the society directly, although indirectly such rules can have their roots in religious sources including fiqh.³²²

Impositionalist jurisprudentialism

Like the first group, Impositionalist Jurisprudentialism not only considers fiqh equal to law but the only legitimate law to rule a Muslim society. But unlike the first group this one believes that for implementation of the whole all-encompassing jurisprudence, especially those social rulings of fiqh with social aspects, there is a need for a jurisprudential governance which its main function is implementing and more accurately imposing jurisprudential rulings. For impositionalist jurisprudentialists policy, or *siyasa*, is an integral part of Islamic governance, and that governance in Islam is not a matter simply of rule by the text but of politics and administration by judicious rulers whose decisions is to be guided by the Islamic law, but that they also take into consideration a variety of factors that could not be

³²² Mohsen Kadivar, "Mardomsalari dini" (Islamic Democracy). Accessible via: <http://kadivar.com/?p=5686>

encapsulated by the legal text alone.³²³ As such since jurists are exclusive experts of Islamic law then this approach consequently leads to the not only ‘governance of fiqh’ or *hakamiyyate fiqh* but to ‘governance of jurists’ or *hokoumate faqih*. People, in this approach, do not have rights but only have responsibilities which they must fulfil. The government not only does not need to obey people’s will but can and must impose religious rulings on them by force.

Impositionalist jurisprudentialism of both Shia and Sunni in its turn can have a range of advocates – the most extreme one is called pro-violence impositionalists or *al-nasr bil-r’ub* (victory through terrorising) which is keen on islamicization through use of violence. The current violence undertaken in Iraq and Syria under the flag of Daesh and other terrorist groups could be considered as an outgrowth of the pro-violence impositionalist jurisprudentialism but since they do not show the minimal adherence to jurisprudence and their acts of terrorism fall not only outside but against the very basic teachings of fiqh such a connection is problematic. However, this does not stop pro-terrorist extremists to portray themselves as attachment to this category so that they can harvest countless benefits from such relationship and it is why they try to imitate the language of impositionalist jurisprudentialists. Such a shared language can be seen in a Daeshi commander’s comment when raising his sword saying out-loudly: “I swear to God, who there is no god but Him, that there is no way to establish Sharia but through use of violence.”

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³²³ Kamali, *Shari’ah Law*, p. 8.

³²⁴ والله الذى لا اله الا هو، لا يقام شرع الله الا بالسلاح

<https://news.vice.com/video/the-islamic-state-full-length>

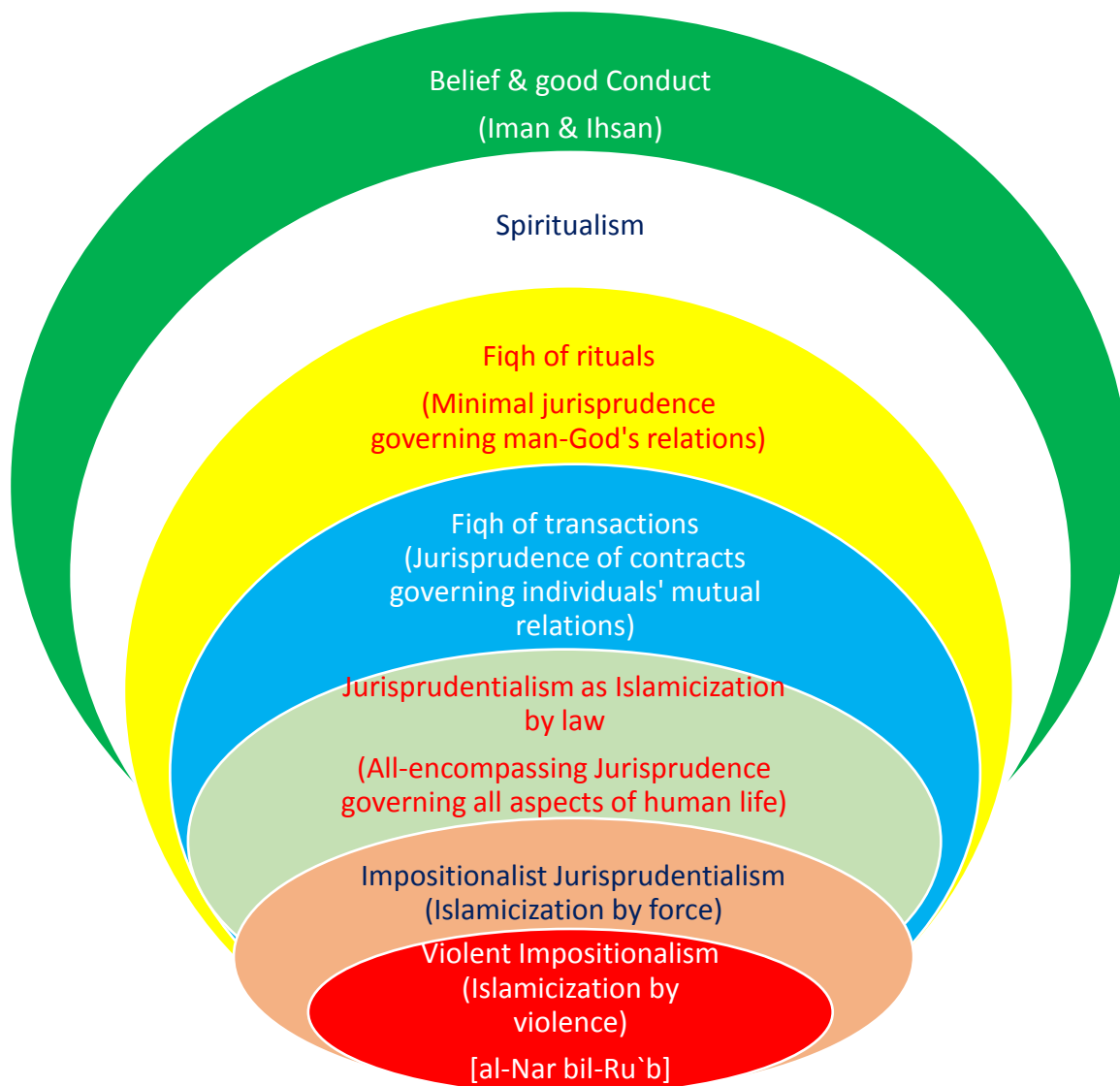


Figure 10 Position of Jurisprudentialist camps in comparison with other camps of Islam

One point that is needed to be born in mind regarding the above diagram is that jurisprudentialism itself is on the very edge of iman and any further stretch falls outside the realm of iman. Iman means freely believing in something and, naturally, when imposition starts iman ends. As such not only violent impositionalism but impositionalism itself falls outside the realm of iman.

As mentioned above the pro-terrorist extremist Muslims could have been defined as a subgroup of the ‘violent impositionalist jurisprudentialism’ if they had the least adherence to fiqh but they act so carelessly outside, rather against, jurisprudence that considering them inside realm of jurisprudence requires significant level of inadvertence. Of course pro-terrorist extremists are eager to have themselves

included under the banner of jurisprudentialism to use the significant advantages of such connexion. Hereunder I will try to, briefly, explain the reason for such eagerness.

Religion not only shapes human belief but moves and motivates people and determines believers' conduct to a large extent and as such can shape the believers' collective actions. However, sharing abstract beliefs is not enough to bring about any unification to the actions of believers in the practical realm. For bringing such unification takes a shared language to coordinate the potentially dispersed actions of individuals and give them a purposeful direction. Legal language, because of its definite commands and clear instruction, has the potential to unify actions such that otherwise isolated energies come together to enable a shared goal to be achieved. Legal language is usually used to form the reality rather than merely describe it. Accordingly, legal language is quite normative and stimulating. Islamic jurisprudence is the legal body of Islam and its language can function as any other legal language does.

For the above characteristics Muslim violent extremists are particularly interested in the legal language of Islam. Without such a normative language violent extremists have marginal chance to invite people to their felonious agenda. Without a significant amount of social support and recruiting enough members ready to fight for them violent extremists cannot encounter the internal and external pressures facing them from both non-violent Muslim mainstream and also international players. Using the Islamic juridical language enables extremists to foist themselves as true representatives of Islam and in this way sell their criminal ideas as Islamic. There are six characteristics in the Islamic juridical language that can help violent extremists further their plans more smoothly:

- 1- Unification of actions: unifying actions and energies is among the highest priorities for furthering mega plans such as plans for changing conditions or entire societies. The easiest way for collecting dispersed factions and fractions around an idea is to wrap it in a normative language that is accepted and supported by all.
- 2- Localization of inharmonious ideas: labeling even the most preposterous ideas as religious removes or decreases the level of opposition of the host societies. Even if extremists cannot attract support of the wider society, by labelling their ideas as religious, they can ensure neutralization of the host society and in this way hinder any coalition between the mainstream host society and the anti-terror camp.
- 3- Sharing popularity of jurisprudentialism: at this stage jurisprudentialism, due to its rule in confronting corruption, enjoys a notable amount of popularity. For ordinary people elimination of corruption is the first priority. It is because corruption affects their lives on daily basis and fighting corruption for Muslim masses is more urgent than, for example, confronting foreign intervention. If Muslims have problem with foreign intervention a big part of it is because they are convinced the foreign powers are supporting corrupt elite ruling their countries. By using jurisprudential language violent extremists can claim popularity of jurisprudentialism.
- 4- Feasibility: Islamic legal language is quite abstruse. A big part of it is because Islamic jurisprudence has stayed in the past and as such has kept its old characteristics including its old vocabulary which is not familiar for majority of people. This unfamiliarity of Muslim masses with the Islamic

juridical language provides a unique chance for the extremists to use and interpret it at their whim.

- 5- Capacity for sanctification: one of the main problems of Muslim extremists is that their ideas are so malicious that in normal situation they do not have any chance for being accepted by people. Islamic legal language's capacity for sanctification of even ordinary issues is a capability that is welcomed by the Muslim extremists the most. By sanctifying felonious actions such as terrorism extremists can strip these actions of their moral constraints at least in the eyes of their sympathizers.
- 6- Indisputability: Jurisprudential language is used by violent extremist Muslims to imbue their orders and prohibitions with a sense of religious holiness. This provides a context wherein their rulings are promoted as beyond dispute.

One of the main religious legal terms that is distorted and misused by violent extremist Muslims quite often to justify their terroristic action, is the term 'jihad'. Muslim violent extremists use Islamic jurisprudential terms, including jihad, to justify their otherwise felonious acts of terrorism. This tactic of sanctification of criminal acts of terrorism by use of Islamic legal terms and language is one of the clearest instances which explains thirst of extremists for exploitation of Islamic legal language. In this instance Jihad as a jurisprudential term is used to provide moral justification and, more than that, to sanctify specific acts of violence to the degree that strips such violence of its horror and the moral constraints. To see how genuine claims of pro-terrorism Muslim extremists are, in the next part we first familiarize ourselves with the Shia jurisprudence and then examine the position of jihad in this

jurisprudence and finally investigate capacity of jihad for being used as a medium for justification of terrorism.

Conclusion

Many of Muslim countries colonized by European powers are characterised by a high level of corruption and Muslims see this crippling situation as result of foreign cultural and political domination.³²⁵ To get rid of this level of unbearable corruption a quest for rigid moral codes, namely Islamic law, is often and increasingly put forth as an antidote to the expansion of corruption and consequent collapse of public integrity and social morality in the Islamic world.³²⁶ Another part of this quest for Islamic law is related to cultural revivalism which is shared with non-Muslim colonized countries. The rise of jurisprudentialism has a corollary with violence fuelled by foreign invasion, and internal ethnic and religious conflicts. Influenced mostly by the popularity of jurisprudentialism the violent extremist Muslims (stimulated by the above mentioned situation) have shown interest in using Islamic legal terms and language to promote and justify their causes and methods. Such a usage of Islamic legal language is, especially, intensively applied by organizers and supporters of suicide terrorism. When studying suicide terrorism it is necessary to pay attention to the wider picture of the current developments in the Islamic world and to not confuse symptoms with root causes and also not to confuse concurrence with correlation and these two with causal relations between these phenomenon. The main difference between the mainstream jurisprudentialism with violent

³²⁵ Alexander Khranchikhin, "Suicide terrorism as the most effective method of terrorism: military and migratory aspects" in Tatyana Dronzina and Rachid El Houdaigui (eds.), *Contemporary suicide terrorism: origins, trends and ways of tackling it*, *NATO Science for Peace and Security Studies*, Vol. 101, IOS Press, 2012, pp. 13-14.

³²⁶ Book review, <http://carnegiendowment.org/2015/01/19/thieves-of-state-why-corruption-threatens-global-security>

extremism is that jurisprudentialism pursues the Islamicization of politics while violent extremism is after politicization of Islam in a way that justify their particular agenda and does not tie their hands. While the first group refers to the text sincerely to follow it, the second group refers to the text to exploit and twist it to legitimize its causes and methods. As such the first group is after Islamicization of politics while the second group is after politicization of Islam.

Part Three

Suicide Terrorism and Shia Jurisprudence

Introduction to Part Three

Nowadays many ordinary practicing Muslims are more associated to their religion through jurisprudence rather than theology or mysticism. By means of jurisprudence, many Muslims try to live in harmony with their Creator, with the rest of mankind, and with the rest of creation. For Shia Muslims, like their fellow Sunni Muslims, the commands and regulations of Islam (which are supposed to regulate human's life and bring harmony and peace to him) have not been fully articulated in the Quran or by the Prophet or the Imams in an explicit way. Thus there is a need for a medium to clarify such regulations. This medium, for both Sunni and Shias, is fiqh or Islamic jurisprudence. Depending on how encompassing the realm of fiqh is seen by Muslims the coverage of fiqh may include simple rituals only, or alternately it may be so inclusive that does not leave anything out of its domain. For understanding and predicting the behaviour of those who tone their actions with ideas of Islamic jurisprudence, a precise understanding of fiqh is crucial. The importance of the study of fiqh becomes even more vital when some significantly destructive actions are undertaken in the name of, or by the use of, fiqh. Suicide terrorism is one of these destructive actions which its perpetrators claim to be associated with Islamic law as a product of fiqh. In this part we will try to provide an adequate understanding of Shia jurisprudence.

Shia Jurisprudence: Short History

Shia jurisprudence is the youngest among the five dominant legal schools of Islam today. Although the first Shia 'jurisprudential expert/collectors of tradition/*hadith*' or *muhaddith al-fiqhi* emerged during the lifetime of the twelfth Shia Imam in the fourth Islamic century, it took another century for Shia jurisprudence to introduce its first jurist or *faqih*. As we know 'the experts of tradition' or *al-muhaddithun*

were compilers of hadith. Jurisprudential *muhaddithun* were those who were compiling traditions according to their legal subject matters. Shaikh al-Kulaini (d. 328/941) was the first Shia jurisprudential muhaddith who compiled the hadith of the Prophet and the Shia Imams according to their legal contents in his famous book ‘al-Kafi’. The reason why jurisprudence in Shia Islam did not emerge at the same time with Sunni jurisprudence is that for Shias the Living Tradition continued three centuries more than that of the Sunnis. This means that for Shias, until their eleventh Imam deceased, they did not need to derive rulings from the text and could simply follow conduct of their Imams.³²⁷

After Shaikh Kulaini the most famous of the other early Shia jurisprudential *muhaddithun* include Ibn Babavaih, better known as Shaikh Saduq (d. 381/991), Shaikh Mufid (d. 413/1022) and Seyyed Murtada, known as al-Sharif al-Murtada (d. 436/1044). These men organized the traditions in a way that one would be able to derive his/her religious duty by referring to them without any need for a jurist to undertake ijtiḥad and provide them with ready fatwas. As such it can be said that for around one century following the eleventh Imam and the end of the era of the Living Tradition for Shias (and before Shaikh Tusi d. 460/1067), there was a common simple ijtiḥad undertaken by general Shia Muslims themselves referring to the already classified traditions. In this era, other than fiqh in other subjects, Shias were quite close to Mutazilas. Before Shaikh Tusi most prominent Shia scholars were closely associated with Mutazili thinkers. For example both of the great Shia jurisprudential *muhaddithun* Shaikh al-Mufid and al-Sharif al-Murtada were disciples of the great Mutazili thinker Qadi Abd al-Jabbar (d. 1025). Shaikh Tusi is

³²⁷ Mortaza Motahari, *Ashenaei ba ulum-e islami*; Usul fiqh, Entesharat Sadra, no date, p. 60.

the first Shia faqih who released fatwas and introduced Shia jurisprudence and also expanded this branch of Islamic jurisprudence through founding the giant Shia seminary of Najaf in 1055 and wrote intensive works using the same traditionalist³²⁸ approach of al-Shafi`ei. Before Shaikh Tusi Shia scholars were influenced by Mutazilism, Tusi turned the course around and followed Sunni Asharite scholars at least in jurisprudence.

Regarding the relationship of Shia jurisprudence with politics it is worthy to know that, even though some Shia jurists were given governmental positions in Sunni dynasties, Shia jurisprudence did not find any chance to rule officially until 16th century. Although the Iranian Shia dynasty of Buyids (r. 934-1062) and also some Shia Ilkhanids including Sultan Muhammad Khodabandeh (Uljeitu, the eighth Ilkhanid dynasty ruler who ruled from 1304 to 1316) were supportive of Shia jurisprudence, it was not until the Safavid dynasty took power in Iran in 1501 that it was able to find an actual chance to show its competency. Shia jurisprudence was introduced openly into Iran at the political level by the Safavid dynasty [r. 1501-1732) at the beginning of the 16th century.³²⁹

Although the Zand dynasty (r. 1750-1794) was a Shia kingdom like the Safavids, this short-lived dynasty was too busy establishing its rule and it did not have enough time or resources to focus deeply on other issues – including religion. Unlike the Zands the Qajar dynasty (r. 1785-1925), for various reasons to do with political

³²⁸ Traditionism as an intellectual approach in close relation with Asharite movement. Traditionists are known as *ahl al-hadith* (partisans of tradition) who are against rationalists or *ahl a-ra'y* as 'partisans of reason'. The division of *ashab al-aql* (people of reason) and *ashab al-naql* (people of report/hadith) is one of the very first divisions among Muslim intellectuals. This division does not limit to Islamic jurisprudence and it is why we consider traditionists in fiqh as a group of wider anti-rationalists or Asharites.

³²⁹ Hallaq, *Islamic law*, p. 107.

legitimacy, at the beginning of its rule³³⁰ invested heavily in the religious institutions, dedicating much property in the way of *waqf*. This gesture, however, failed to co-opt the Twelver Shia ulama into the power structures of the ruling dynasty.³³¹ This was mostly because the Shia ulama were receiving religious taxes directly from their followers and therefore were not solely reliant on governmental support. By the period of European encroachment, the religious establishment and its personnel represented by ulama stood in a more powerful position in relation to the political establishment than the corresponding Sunni ulama – including their counterparts within the Ottoman Empire – whose power was manifestly dependent on the political sovereign.³³²

Unlike the Safavids that had proclaimed themselves representatives of the Hidden Imam of Shia (and therefore investing themselves with attributes of divine authority that embraced both the political and the legal realms)³³³ neither the Qajars nor any of their political competitors made such religious or legal claims. After the Safavids the Shia ulama stepped in and proclaimed their own divine representation on behalf of the Hidden Twelfth Imam and thus asserted their prerogative to fill the gap and replace the religious powers of the Safavid kings. This measure complemented the exclusively temporal competence of the Qajars.³³⁴ After the decline of the Safavids, but certainly by the time of the rise of the Qajars, the Shia ulama stood apart from the ruler and his government. The fatwas of the great Shia legists could therefore

³³⁰ Because of Qajars' costly wars with Russian and British Empires very soon their resources dried up and they strated to encroach on assets of religious centres.

³³¹ Hallaq, *Islamic law*, p. 108.

³³² Ibid.

³³³ Ibid.

³³⁴ Ibid.

announce any imperial decree invalid.³³⁵ The most famous example is the *fatwa* of Mirza Hasan Shirazi against the concession to a British company for a monopoly over trade of tobacco, which was granted by Naser al-Din Shah in 1890. The deal was cancelled because of this simple single line *fatwa*.³³⁶ Due to this independence from the government it was easy for Shia ulama to represent the oppressed masses and this in its turn would attract massive support from the majority of the population that had been overly burdened by excessive taxation and mistreatment.³³⁷ Another issue that gave Shia ulama a strong position was the problem of decentralization and weak government control in the outlying provinces. The rise of regional chieftains after the Safavids further weakened this control and provided the opportunity for a powerful Shia ulama to step in to fill the vacuum even in some non-religious realms depending on the masses' request.³³⁸ An example of this was witnessed on one occasion when Shirazi took the side of Iranian tradesmen.

During the Qajar rule there was no one strong group to establish the final word on any given policy and the three main players (the ruling family, the tribal chieftains and the Shia ulama) were constantly balancing between themselves to ensure no one group could implement its own plans entirely.³³⁹ Due to this lack of absolute power and as a result of the resistance mounted by the Shia ulama, the Qajar dynasty made only very limited efforts in the way of centralization and modernization/westernization.³⁴⁰ Hallaq explains the uneven road of Qajars to westernization/modernisation as follows:

³³⁵ Ibid.

³³⁶ Shepard, *Islam*, p.291.

³³⁷ Hallaq, *Islamic law*, p. 108.

³³⁸ Ibid.

³³⁹ Ibid.

³⁴⁰ Shepard, *op cit*, p. 289.

Most reform plans initiated by the Qajars never materialized on any large scale. The limited reforms undertaken by Qajars were both minimal and gradual, initially reflected in such acts as sending the first group of Iranian students to Europe in 1828. Western education was accompanied by a stress on translating European works into the Persian language and the consequent expansion of awareness about Western culture among the middle class which in turn attracted more support for modernization The first proposal for a modernization of the bureaucracy in 1851 by the Qajar administration (which was imitating the Ottoman *Gulhane* Decree of 1839) failed before it could produce any results... The Western style judicial reforms begun in 1858 – which set up provincial departments of justice and was aiming to centralize the judiciary system – did not have a better destiny... Another serious reform plan was drafted in 1871, suggesting, among other things the creation of a system of Western-style hierarchical courts with special codes to be applied within them but this project too did not achieve its goals... It was not until the Constitutional Revolution of 1905 that the first partially significant reform took place. In 1906 the first Iranian parliament, namely the National Consultative Assembly, was established. The new parliament could produce no more than a Basic Law that affirmed the supremacy of the Islamic law and a committee of five mujtahids was suggested for the purpose of ensuring this supremacy... However the new constitution did introduce the idea of a separation of powers and granted judges life tenure in an effort to enhance the concept of the rule of law.³⁴¹

The real wave of Westernization stormed Iran during reign of Reza Shah (r. 1925-1942), founder of the new kingdom of the Pahlavi dynasty.³⁴² The reason for this delay was the fact that Iran was difficult to centralize. Between the collapse of the Safavids in 1732 and the consolidation of Qajars in 1794, the country had enough time to fall prey to multiple competing tribal chieftains who aspired to general

³⁴¹ Ibid.

³⁴² Ibid.

control.³⁴³ The Qajars arrived in the midst of this scene and were too weak to bring the chieftains under their control. Reza Shah was famous for being strong and ambitious. Enjoying an iron will and a clear plan Reza Shah furthered his two programs of ‘westernization of the country’ and ‘centralization of the political power’ simultaneously. He succeeded in both in less than a generation while this took, for example, Turkey and Egypt over a century.³⁴⁴ During Reza Shah’s rule religion in general and the ulama in particular lost a huge amount of their influence in the public sphere. Within the harsh policy of secularization there was no place for religion even in quite private issues such as dress.³⁴⁵ Although Reza Shah’s strategy of iron fist left limited chances for his opponents to challenge his rule, the marginalized ulama who had become his sworn enemy took revenge on his successor and son Mohammad Reza Shah, the second and the last Pahlavi ruler during the 1979 Revolution.³⁴⁶ Of course the ulama were not able to overthrow the Shah if it was not for the profound dissatisfaction with the superficial westernization by the secular intellectuals that undermined the figure of Shah both domestically and internationally. This reckless Westernization imposed by the Shah was described by the Leftist intellectual Jalal Al-e Ahmad (1923-1969) as “Westoxication” or *gharbzadegi*.³⁴⁷

Doctrine of the Guardianship of the Jurist or Valayat-e Faqih (ولایت فقیه)

Deeply charged with intense anti-colonialist sentiments, Ayatollah Khomeini, the charismatic leader and theorist of the 1979 Revolution, proposed a new

³⁴³ Hallaq, *Islamic Law*, p. 109.

³⁴⁴ Shepard, *Islam*, p. 293.

³⁴⁵ Hallaq, *Islamic La*, p. 109.

³⁴⁶ Ibid.

³⁴⁷ Shepard, *Islam*, p. 296.

administrative theory based on the political leadership of experts of the Islamic law or *faqih*s.³⁴⁸ Khomeini's theory argued that, as long as the Twelfth Imam remains in hiding, a qualified jurist must fulfil the role of political and religious ruler – representing the Imam's functions in all worldly and spiritual affairs. The idea of a ruler-ship of jurists which was called "Doctrine of the Guardianship of the Jurist" or *Valayat-e Faqih* (ولایت فقیه) was formally enshrined in the 1979 Constitution of the new Republic. Article Five states that the Jurist, or a group of such Jurists, who has fulfilled the mastery of the Islamic law and has qualifications of *ijtihad*, is/are entitled to exercise leadership, provided the Imam continues to be absent.³⁴⁹ The extension of the Jurist's powers to the political, military and other secular realms was justified, in Khomeini's discourse, by reasoning to the effect that, for an Islamic state to be run in genuine compliance with the Islamic law, it must be supervised and administered by the ultimate expert in the law.³⁵⁰ Khomeini's position represented an expansion on the doctrine he elaborated during the decade or so before the Revolution which was more in line with the framework of the Constitutional Revolution's role dedicated to *ulama*. In that earlier version of Khomeini's doctrine jurists assumed a supervisory role whereby Jurists evaluate all legislation in order to ensure that laws stand in conformity with the rules of the Islamic law.³⁵¹

Toward the end of his life, however, Khomeini modified his doctrine for the second time. Now he maintained that the ruling jurist or *valiyy-e faqih* is not bound by the Islamic law, and can make his own determination of what the law is. According to

³⁴⁸ Hallaq, *Islamic Law*, p. 110.

³⁴⁹ *Ibid.*

³⁵⁰ *Ibid.*

³⁵¹ *Ibid.*, p. 153.

this modified version of the doctrine, *valiyy-e faqih* could abrogate even the essential pillars of Islam such as pilgrimage and demolish mosques, among other things, if “the interests of the Islamic country” are threatened.³⁵² Very much in the spirit of the modern state which sees itself as a system whose function is to create and impose discipline with a view to correcting any deviation from the self-established norms, Khomeini fully absorbed this modernist perception of the law’s function and stated: “Islam regards law as a tool, not as an end in itself. Law is a tool and an instrument for the establishment of justice in society, a means for man’s intellectual and moral reform and his purification.”³⁵³

Khomeini’s unusual innovation, and maybe the greatest of the whole century, of considering rule of jurists as the only legitimate form of governance³⁵⁴ may well have attracted very limited attention if revolutionary Iran had not challenged post-colonialism so publicly.³⁵⁵ After the two popular Iranian revolutions of the Constitutional Revolution (1905-11) and the Nationalization Revolution (1953) were suppressed by foreign governments most Iranians were fed up with the interventions of both the West and the East (Communism). They welcomed a third trend which was rooted inside their own Shia culture.³⁵⁶ The Russians were blamed for the miscarriage of the Constitutional Revolution by their support for the tyranny of Mohammad-Ali Shah and their part in organizing a coup against the constitutionalists in 1911.³⁵⁷ Iranians never forgave the northern neighbor for its

³⁵² Ibid.

³⁵³ Ruhollah Khomeini, *Islam and Revolution: Writings and Declarations*, trans. Hamid Algar, Mizan Press, 1981, p. 80. Also quoted in Hallaq, *Islamic Law*, p. 153.

³⁵⁴ Shepard, *Islam*, p. 297.

³⁵⁵ Hallaq, *Islamic Law*, p. 153.

³⁵⁶ Ibid.

³⁵⁷ Ibid.

interventionist policies. This is why, despite several occasions of regime change in Russia, even today most of Iranians do not trust Moscow. The Constitutional Revolution, which aimed to limit the sovereign's power by an elected parliament, remained as a smirking symbol, reminding Iranians how their efforts to achieve their goals through a Parliament failed after the coup.³⁵⁸ Around half a century later Iranians decided to try their luck once more to eject excessive foreign interference in their internal affairs. This time the movement focused on the nationalization of the oil industry as the most important section of both Iranian economy and politics. In 1953 the UK and the USA arranged a military coup to overthrow the nationalist Prime Minister Mohammad Mosadeq.³⁵⁹ Under these circumstances not only religious but even many of secular Iranians welcomed a rare political change whose only outstanding and popular characteristic was that of being rooted inside Iranian culture and not influenced by foreigners.³⁶⁰

The complicated doctrine of Valayat-e Faqih was based on a very simple tradition attributed to the Hidden Imam, al-Mahdi, indicating that Shias should refer to the narrators of the Imams' traditions in the case of seeking answers for their new questions.³⁶¹ The Iranian clergy showed exceptional ingenuity by claiming political power through such a simple tradition. This doctrine unites both popular sovereignty and divine sovereignty under a single government headed by a jurist. The idea that jurists are representatives of the Imams was used to collect religious tax by Shia clergies before and turning it into a political tool to claim governance

³⁵⁸ Aslan, *No God but god*, p. 91.

³⁵⁹ Ibid.

³⁶⁰ Ibid.

³⁶¹ وأما الحوادث الواقعة فارجعوا فيها إلى رواة حديثنا
وسائل الشيعة، ج 18، ص 101.

did not happen until 1979. According to the Doctrine of Valayat-e Faqih all the rights that the Prophet and the Imams enjoyed regarding the management of social affairs the ruling jurist enjoys as well.³⁶²

As we saw, although the Doctrine of Valayat-e Faqih is a recent innovation, another doctrine known as ‘Supervision of Jurist’ or *Nezarat-e Faqih* نظارت فقيه was introduced during the 1905 Constitutional Revolution which led to the idea of appointment of a group of jurists to check whether Parliamentary legislation contradicted the religion or not. After the introduction of Valayat-e Faqih several interpretations and replacements were suggested regarding the implementation of the Doctrine. The first one, which later on was introduced as a separate doctrine as ‘Vakalat-e Faqih’, tried to reconcile the Doctrine with democracy by suggesting that if people wish they could elect one or more qualified jurists to represent them in monitoring whether the state is functioning in compliance with the Islamic values. A second development occurred when Ayatollah Hossein-Ali Montazeri, the most prominent ideologue of the Doctrine and author of the book ‘Valayat-e Faqih’³⁶³, retreated from his first idea and explained that since the government is the right of people then any interference by any third party, including jurists, must be done after having the explicit permission of the people and naturally through election. This notion divided the Doctrine to: *Entekhabi* (through public election) and *Entesabi* (appointed by God) versions of Valayat-e Faqih.³⁶⁴ Actually Valayat-

³⁶² See: Rouhollah Khomeini, *Hokoumat-e islami* (Islamic Government), Orouj Publications, 1388.

³⁶³ *Wilat al-Faqih*, The Arabic text of Ayatollah Montazeri: حسينعلى منتظرى، دراسات فى ولايه الفقيه و فقه الدوله الاسلاميه

³⁶⁴ Mohsen Kadivar, “Tashrih-e didgah-e ayatollah montazeri darbare valayat-e faqih” (Standpoint of Ayatollah Montazeri about valayat-e Faqih). Accessible via: <http://kadivar.com/?p=3072>

e Entekhabi is so close to former Vakalat-e Faqih that it is difficult to separate them in many aspects.

As it is shown, each of the three Traditionalist, Pluralist and Impositionalist camps of Shia jurisprudentialism have their own interpretation of the Doctrine of Valayat-e Faqih; namely, Nazar-at-e Faqih for traditionalists, Valayat-e Entekhabi (and also Vakalat-e Faqih) for Pluralists, and Valayat-e Entesabi for impositionalists. This latter one denies contribution of masses in political realm and dedicates it exclusively to the experts of Islamic law or *foqaha*.

Chapter Seven

Shia Jurisprudence and its Foundations: Usul al-fiqh and ijtiḥad

Introduction

Since we are going to study the concept of jihad in Shia jurisprudence, it is necessary to demonstrate what this jurisprudence is based upon and how it functions. In other words, while in the next chapters we will talk about what is happening within Shia jurisprudence regarding jihad and its relation to suicide terrorism, in this section we will examine what happens in the background of Shia jurisprudence and how Shia Islamic law is developed. Primarily it is useful to mention that the Shia jurisprudence has three components which are: usul al-fiqh, ijtiḥad and fiqh.

Usul al-Fiqh: includes both the accepted sources for Islamic law and also the method for deriving laws from those sources. As such usul al-fiqh is, in reality, the "study of the rules to be used in deducing the detailed Islamic laws from their valid sources"³⁶⁵ and it teaches the correct and valid way of deducing laws from the relevant sources in jurisprudence.

Ijtiḥad: Ijtiḥad in its current limited sense -which is better to be called as ‘common ijtiḥad’ or *ijtiḥad-e motaaraḥ* as against *ijtiḥad-e asil* or ‘original ijtiḥad’³⁶⁶- means

³⁶⁵ Morteza Motahari, *Jurisprudence and its Principles*, trans. Salman Tawhidi, Tarikhe Tarsile Quran publications, no date.p. 10.

³⁶⁶ Ijtiḥad could be divided to ‘original ijtiḥad’ or *ijtiḥad-e asil* and ‘common ijtiḥad’ or *ijtiḥad-e motaaraḥ*, the first to point to the pre-closure of gates of ijtiḥad and the latter to describe the post-closure of gates of ijtiḥad.

the act of deducing practical rulings from their valid sources by qualified experts, namely *mujtahids*.³⁶⁷

Fiqh: is the process of deducing detailed rulings from approved sources. Islamic law, as detailed rulings of conduct, is the final product of fiqh.

In this chapter we will discuss *usul al-fiqh* and *ijtihad* and in the next chapter we will study fiqh with focus on jihad as the tool used for the justification of violence by Muslim violent extremists.

Usul al-fiqh, or Islamic legal theory

Usul al-fiqh or principles of jurisprudence is a separate branch of legal learning within the discipline of Islamic legal studies. *Usul al-fiqh* is the ‘roots’ or principles from which Islamic law is derived, in other words it is Islamic legal theory or more generally the philosophy of Islamic jurisprudence.³⁶⁸ *Usul al-fiqh*, in both Sunni and Shia traditions, in its final classical form, recognizes four official bases: the Quran, the Sunna, the Consensus, and Reasoning.³⁶⁹ While different Islamic legal schools of both Sunni and Shia agree on the finality of these four bases they differ significantly over the comprehension and application of these bases for deriving religious rules. Hereunder we will discuss Shia *usul al-fiqh* based on Mortaza Motahari’s book of ‘*usul fiqh*’ which, as he himself asserts, is the closest to the academic method among authentic books on Shia *usul al-fiqh*.³⁷⁰

³⁶⁷ Mortaza Motahari, *Usul fiqh*, Sadra publication, no date, p. 9.

³⁶⁸ Schacht, *Islamic Law*, p. 114.

³⁶⁹ Ibid.

³⁷⁰ Motahari, *Usul fiqh*, p. 23.

On the sources of Shia jurisprudence

As was mentioned above there are four sources which the Shia jurisprudence use to derive religious rulings. These sources are called the ‘four proofs’ or *adilla al-arba'ah* (الدلة الاربعه). Among the four sources of Shia jurisprudence the first three are, to a great extent, held in common with Sunni jurisprudence which are: the Book (the Quran قرآن), the tradition (*Sunna* سنه) and the Consensus (*Ijma`* اجماع). Although all Islamic legal schools retain a degree of reasoning, as the fourth source of religious law Shia scholars of *usul al-fiqh*, or *usuliyyun* (who are also among ‘partisans of *ijtihad*’ as against ‘partisans of report’ or Akhbaris)³⁷¹, exclusively believe in authenticity of reason (*Aql* عقل) as an independent and binding source of law which none of Sunni legal schools do.³⁷² After introducing the first three sources of Shia jurisprudence, we will discuss the fourth source of Shia jurisprudence as the factor which distinguishes this legal school from other Islamic jurisprudential schools.

The Quran (القرآن)

Muslims have always used the Quran as the guideline in order to deduce Islamic laws from the early days of Islam. There is no doubt among any Islamic legal schools that the Quran is the first and the most important source for the laws and regulations of Islam. Of course the ayahs³⁷³ or verses of the Quran are not limited

³⁷¹ The term ‘usuli’ might be used as ‘expert of *usul al-fiqh*’ as well as ‘partisans of *ijtihad*’ as against ‘partisans of report’ or ‘akhbaris’. However since those who use ‘*usul al-fiqh*’ necessarily do it for ‘*ijtihad*’ then they are inevitably non-akhbari. As such ‘experts of *usul*’ are included in ‘*usulis*’ although they are not the only ‘*usulis*’ as such. However, since I use ‘usuli’ in its more general meaning as ‘pro-*ijtihad*’ and as such against ‘akhbari’ as ‘averse to *ijtihad*’ and since scholars of ‘*usul*’ are among the first ranks of ‘pro-*ijtihadis*’ then for this work there is no need for separating between two meanings of ‘usuli’. It is due to practical requirements because in many cases they are ‘scholars of *usul*’ who are responding to criticisms of ‘partisans of reports’ or ‘traditionists’ and as such they act as representatives of usuli school.

³⁷² Motahari, *Jurisprudence*, p. 12.

³⁷³ Ayah is the smallest component of the Quran. A group of Ayahs or Verses form a Chapter or Surah.

to laws and regulations. In the Quran hundreds of different types of issues have been introduced but a part of the Quran, said to consist of about 350 ayah from a total of 6236 (excluding bismillahs), pertains somehow directly or indirectly to the laws including the regulation of religious rituals.³⁷⁴ Some scholars including Bazargan believe that the Quranic verses that relate exclusively to *Fiqh* or *Ahkam* (rulings) constitute less than 150 or around 2% of the Quran.³⁷⁵

The Quran and the Authenticity of its Literal Meanings (Hojjiyyat Zawahir Quran حجیت ظواهر قرآن)

The legal discussions related to the Quran are basically related to the *Sunna* as well, therefore; in *usul al-fiqh* there are few discussions particular to the Quran. The only discussion centered solely on the Quran concerns the binding nature of its literal (exoteric) meanings, by which is meant the question of whether the laws of the Quran are binding testimonies for the jurists to unconditionally rely on or not- regardless of whether or not they are qualified, conditioned and explained by relative traditions. It is surprising that the experts of the principles of jurisprudence or *usuliyyun* should have doubted in abidingness of the literal laws of the Quran and thought up such a debate.³⁷⁶ Could the legitimacy of relying on the literal laws of the Quran be ever subject to doubt? This is a discussion that was introduced by the Shia *ulama* of the principles or *usuliyyun* in order to negate the doubts raised by the Shia traditionists or *akhbariyyun*. This latter group believed that other than the Prophet and Imams no one has the right to refer to the Quran, or to deduce the Islamic law from it. In other words, the eternal benefitting of Muslims from the

³⁷⁴ Kamali, *Shari`ah Law*, p. 3.

³⁷⁵ See: Mehdi Bazargan, *Akharat va khoda hadafe besat anbiya* (God and hereafter as goals of prophethood), Rasa publications, 1377/1998, p. 104.

³⁷⁶ Motahari, *Jurisprudence and its Principles*, p. 14.

Quran must be indirect, must be via the *Sunna* of the Prophet and his House or *Ahl al-Bait* (his daughter Fatima, his son of law Ali and their descendants of immaculate Imams).³⁷⁷ This claim of the *akbariyyun* was based upon the traditions that have forbidden interpreting the Quran by personal preference.³⁷⁸ The *usuliyyun*, however, have argued that the deduction by Muslims from the Quran is direct and that the meaning of the prohibition of ‘interpreting the Quran by preference’ is not that people have no right to understand the Quran by their own thought and reflection, but that the Quran must not be interpreted according to desire and inflated ego.³⁷⁹

With regard to the authenticity of the Quran for deducing laws, Shia *usuliyyun* have introduced one more step ahead and announced that the Quran is the main source and that other sources of Islamic law should be examined against it. They argue that the Prophet and the Imams have authentically reported to have said that forged Traditions would appear, and in order to distinguish the true from the false, the believers must check all Traditions with the Quran, and any Traditions that disagree with the Quran must be considered as false and thus disregarded.³⁸⁰ In other words, in the Shia usuli approach it is not the *Sunna* which is prioritized over the Quran but the other way around.³⁸¹

³⁷⁷ Ibid.

³⁷⁸ من فسر القرآن برأيه فقد افترى علي الله الكذب

تفسير برهان، جلد 1، صفحہ 81

³⁷⁹ Naser Makarem Shirazi, “Tafsir be ra’y va avaqib an” (Interpretation by view and its consequences), accessible via: <http://maarefquran.org/index.php/page,viewArticle/LinkID,12988>.

³⁸⁰ قال رسول الله: فَمَا وَافَقَ كِتَابَ اللَّهِ فَخُذُوهُ وَ مَا خَالَفَ كِتَابَ اللَّهِ فَدَعُوهُ

الشيخ الكليني، الاصول من الكافي، ج 1، ص 69

³⁸¹ Motahari, *Jurisprudence and its Principles*, p. 14.

The *Sunna* (السنة)

Like Sunni Legal Schools, the *Sunna* (with some slight differences) is the second source of the Shia Jurisprudence as well and is the most important source after the Quran. *Sunna* in the Shia tradition means the actions and assertions of both the Prophet and the Imams. Technically it means that *Sunna* is a sufficient proof or *dalil* for a jurisprudent to consider the action in question to be the actual law of Islam if it has been approved by the Prophet or the Imams. No scholar of *usul al-fiqh* opposes that *Sunna*, as above, being binding (*hujjat*). However there are differences on the subject of the *Sunna* among Shia and Sunni *usuliyyun* and also within Sunni and Shia *usuliyyun*. These differences mostly concern two points. The first one of which is a matter of difference between Shia and Sunni Muslims is the question of whether the *Sunna* of the Prophet alone is binding or whether the *Sunna* related by the Imams is also binding. Sunni Muslims only consider the *Sunna* of the Prophet as binding but Shias also refer to the words, actions and silent approvals of the Imams as binding. The second point which is shared by both Shia and Sunni *usuliyyun* is about required characteristics of a binding *Sunna*. The *Sunna* is sometimes clear in meaning and also enjoys various chains of trustworthy narrators. Usually there will be no problem in using such an authentic Tradition for deducing laws. But sometimes the authenticity of a Tradition is suspicious, or it is narrated by a single person which then is considered as a Single Report (*khobar al-wahid* خبر الواحد). Here the views vary dramatically. Some, like Abu Hanifa, pay less attention to such Traditions as a source of law generally and do not count weak hadith for consideration. From all the thousands of Traditions narrated from the Prophet, Abu Hanifa considered only 17 hadith to be absolutely reliable.³⁸² Unlike Abu Hanifa,

³⁸² Motahari, *Usul fiqh*, p. 14.

some Sunni jurists have found confidence even in ‘weak’ unreliable Traditions. Shia *usuliyyun* are of the opinion that only reliable traditions are to be given credence.³⁸³ Although the *Sunna* is accepted as one of the sources of fiqh there are issues related to the degree of abidingness of this source which are discussed hereunder:

Issues related to abidingness of the Sunna

Regarding the binding testimony of the *Sunna* two subjects are discussed in the study of Principles. One is the question of the binding testimony of the *khobar al-wahid* or the Single Report and the other is the question of the Traditions which conflict with the Quran or indeed contradicting each other. In response to this two issues two important branches of the study of Principles is opened: one called the Single Report, (*khobar al-wahid* خبير الواحد) and the other Unification (or taking into consideration the commonalities of contradicting reports) and Preference (*t'adul wa tarajih* التعدادل و التراجيح).³⁸⁴

The Single Report (khobar al-wahid خبير الواحد)

Khobar al-wahid is a Tradition that has allegedly been reported from the Prophet or one of the Imams but by only one person, or is reported by more than one person but does not reach the level that there is no possibility of the Tradition being in any way fabricated (*tawatur* تواتر). Regarding the question whether such a Tradition can be used as a basis for deducing a law or not, *usuliyyun* are divided into two groups. Some *usulis* believe that, provided the all Transmitters of the Single Report were just or at least were probably truthful, the transmitted Traditions can be used to deduce the relevant law. However most of Shia *usuliyyun* believe that such a

³⁸³ Ibid., p. 15.

³⁸⁴ Motahari, *Jurisprudence and its Principles*, p. 14.

document cannot be used on sensitive issues especially when it might lead to harm, i.e. *Hudud*³⁸⁵. The main justifications for this is the Quranic verse 49:6, in which the believers are told to not trust information carried by wrongdoers when decisions based on such information may lead to harm of someone:

*O you who have believed, if there comes to you a wicked person with information, investigate, lest you harm a people out of ignorance and become, over what you have done, regretful. " (49:6)*³⁸⁶

This verse, indirectly, indicates that if a good person gives us a report, we should put it into effect. The meaning of this *ayah*, therefore, has been used by a group of *usuliyyun* as a proof for the binding testimony of the Single Report in non-*hudud* cases.³⁸⁷

Unification and Preference (al-T`adul wa al-Tarajih التّعاوُل و التّراجيح)

This principle is about those Traditions on the same subject which are contrary to each other or oppose the dictates of the Quran. In the case of those Traditions opposing the Quran, as we saw above, Shia ulama of *usul* believe in the rejection of such Traditions while some Sunni Imams such as al-Shafi`ei and Ibn Hanbal give priority to the Traditions rather than the Quran in a case of contradiction. Regarding the question how Traditions contradicting each other should be treated *usuliyyun* are again divided in their views on this issue. Some *usulis* believe that when two contrasting reports exist we are to ignore both of them. Most *usuliyyun* treat this issue differently. Shia ulama of the Principles have believe that first of all the unified content of all the varying Traditions must, as far as possible, be

³⁸⁵ Singular Hadd or physical punishment in regard to certain criminal acts.

³⁸⁶ يَا أَيُّهَا الَّذِينَ آمَنُوا إِن جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَن تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْحَبُوا عَلٰى مَا فَعَلْتُمْ نَادِمِينَ (الحجرات: ٦)

³⁸⁷ Motahari, *Usul fiqh*, p. 26.

implemented. If this is not possible, and neither of the two sides has preference over the other in the reliability of the chain of narrators or in its credibility amongst earlier *ulama* such like, the jurists have the option to act according to whichever of them they prefer and derive the related law accordingly.³⁸⁸

The section regarding the issue of contradicting Traditions is quite voluminous in Shia *usul al-fiqh*. Shia *usuliyyun* discuss different Traditions in this regard which contain instructions of what must be done in the case of contrary Traditions. The Traditions that lead *usuliyyun* to the resolution of the difficulty of contradicting Traditions are called Corrective Reports (*akhbar ul-'Ilajiyah* *الآخبار العلاجية*). This branch of the study of Principles is called 'the Unification and Preference' and discusses the unification of opposing Traditions and the superiority of some over others or *al-t`adul wa al-tarajih* (*التعادل و التراجيح*).³⁸⁹

Common issues between the Quran and the Sunna

Although the Book and the Sunna, with regard to being sources of *fiqh*, each have their own exclusive issues there are also some common issues between the Quran and the Sunna. As we learnt the binding authority of apparent laws is exclusively relevant to the Book, and the issues of the Single Report and of the contradicting testimonies are exclusively of the *Sunna* concern. The issues that are common both to the Book and to the *Sunna* are as follows:

The Discussion of Imperatives (awamir *الأوامر*)

Amr (plural *Awamir*) is an Arabic word which means to order or command. The topic of the 'Commands' in the Shia *usul al-fiqh* discusses how the verbs of

³⁸⁸ Motahari, *Usul fiqh*, p. 27.

³⁸⁹ Motahari, *Jurisprudence and its Principles*, p. 15.

command in the Quran and the *Sunna* could or should be understood. There are many phrases in the Quran and Sunna in form of the imperative. In Shia *usul al-fiqh* many questions are raised in regard to the nature of such imperative phrases. Questions arise as to whether or not the imperative is a proof of the matter being obligatory (*wajib*) or of being desirable (*mustahab*), or of neither. Does the imperative mean that the verb is to be done once or more? Whether or not the imperative is an indication of immediate obligation? Is acting according to an imperative phrase once enough for undertaking the religious duty or must it be performed repeatedly in a regular way (the same as daily prayers, for example)? Sections of the ‘Commands’ in Shia *usul al-fiqh* discuss these questions in detail and divide imperative phrases of the Quran and the Sunna according to their nature.³⁹⁰

The Discussion of Negative Imperatives (النواهي *nawahi*)

This discussion elucidates how the verbs of prohibition in the Book and Sunna could or should be treated. *Nahy* (plural *Nawahi*) is an Arabic word which means to stop or prevent, and is the opposite of imperative. As with *amr*, there are many negative imperative phrases in the Quran and in the Sunna. The same questions that were discussed previously on the subject of the imperative arise on the subject of ‘Negative Imperatives’ and similarly Shia *usuliyyun* divide the negative phrases (alike imperative ones) according to their nature.³⁹¹

The Discussion of Generalities and Particularities (العام و الخاص *a`am wa khas*)

In the Quran and Sunna there are general and common laws which apply to all, and there are laws related to a group of individuals: a law that is opposed to the common

³⁹⁰ Ibid, p. 16.

³⁹¹ Ibid, p. 17.

and general law. Section of ‘Generalities and Particularities’ in Shia *usul al-fiqh* explores the relationship between these two groups of commands. For example if the two laws must be received as being self-contradicting, or, since one of the two laws compared to the other is general while the other is particular, does this mean the latter should be treated as an exception to the former.³⁹² Particularities are so common within Islamic Law that there is a phrase indicating “*ma min a`ammen illa wa qad khoss*”³⁹³ (there is no generality which accepts no particularity).

The Discussion of Unconditional (*mutlaq* مطلق) and Conditional (*muqayyad* مقيد)

‘Discussion of conditional and unconditional’ is similar to ‘generality and particularity’, but generality and particularity are relevant to what the law applies to, while conditional and unconditional are relevant to the different circumstances and qualities of the law itself.³⁹⁴ “The general and particular are relevant to an order that generally covers all the different forms of that which the law applies to, some of which, due to a particular reason, are exempt from that generality.”³⁹⁵ However the question of unconditional and conditional is related to the essence and nature concerning to the task which the duty-bound individual (*mukallaf*) must perform. If the essence and nature related to the duty has no particular condition then it is unconditional, and if it has a particular condition, it is conditional.³⁹⁶ The ‘Discussion of Unconditional and Conditional’ play a very important role within Islamic jurisprudence to the extent that separates different groups of *usuliyyun* from each other in some cases. As we will show later this discussion has been applied to

³⁹² Ibid.

³⁹³ ما من عام الا وقد خص

³⁹⁴ Motahari, *Jurisprudence and its principles*, p. 17.

³⁹⁵ Ibid.

³⁹⁶ Ibid.

jihad as well and most of differences among *ulama* on this issue are based on their understanding of each of the Quranic verses or the Prophetic traditions on jihad as being conditional or unconditional. The important tip is that when there are different orders or prohibitions on a single subject (that some are unconditional and others are conditional) then usually conditional commands narrow unconditional ones. It seems that jihad was turned into an unconditional use of violence against non-Muslims by al-Shafi`ei by declaring the restrictive verses of the Quran against unconditional violence as abrogated which will be discussed shortly.³⁹⁷

The Discussion of Tacit Meanings (mafahim مفاهيم)

In the terminology of *usul al-fiqh* the tacit is the opposite of spoken. Technically it means that when the believers are ordered to do something they have been ordered to avoid the opposite of it and vice versa, although the second part is not spoken of in the sources. We talked about it when explaining how the Scholars of Principles extracted the rulings for permission to rely on the Single Report from the Quranic verse 49:6 on “not accepting the news reported by a wrong doer before inspection”. Although the above verse does not say anything about the validity of a Single Report (since it has only rejected accepting it from wicked persons) then its tacit meaning is that it is acceptable from trustworthy persons. As such the tacit meaning of this verse is used as a proof for *abidingness* of the Single Report.³⁹⁸

The Discussion of the Abstract (mujmal مجمل) and the Clear (mubayyan مبين)

The ‘Discussion of the Abstract and the Clear’ simply means that sometimes a phrase in the language of the Prophet is ambiguous and its meaning is unclear. For example the word *ghena* (a special kind of music) in the Sunna is not clear by itself

³⁹⁷ See: Imam al-Shafi`ei, *kitab al-umm*, section of jihad.

³⁹⁸ Motahari, *Jurisprudence and its principles*, p.18.

but there are proofs from the Quran or the *Sunna* that explain dimensions of this word. In such cases the ambiguity of the abstract is cancelled by the clear instructions related to the same issue somewhere else.³⁹⁹ The issue of ‘the General and the Clear’ is somehow similar to that of ‘Unconditional and Conditional’.

The discussion of the abrogator (ناسخ *nasikh*) and the abrogated (منسوخ *mansukh*)

Discussions about ‘the Abrogator and the Abrogated’ is of an utmost importance in the Shia *usul al-fiqh*. On the issue of abrogation many questions are raised which are reflected on and discussed in the study of *usul al-fiqh*. “Sometimes in the Quran and the Sunna we come across an instruction that was temporary, meaning that after a time a different instruction was given, which has cancelled the first instruction”, Motahari argues.⁴⁰⁰ The discussion of the Abrogator and the Abrogated sometimes clashes with the discussion of Unconditional and Conditional on the subject of jihad. By this I mean that when some jurists consider a group of verses on jihad as ‘Conditional’ which limit the ‘Unconditional’ verses, others may consider the conditional verses as ‘abrogated’ which must be ignored and refer to other verses of unconditional ones. The al-Shafi`ei’s view in this regard was mentioned recently.

The Principles of Application (الاصول العمليه)

What was mentioned before as issues related to deriving religious duties are called the ‘Principles of Deducing’ or *usul al-istinbat* (اصول الاستنباط) which include cases where deducing rulings from valid sources is possible. *Usul al-fiqh* also includes principles where deducing rulings from valid sources is not definite and reliable. This latter group of principles are called *usul al-amaliyya* or the ‘Principles of

³⁹⁹ Ibid.

⁴⁰⁰ Ibid.

Application'. As such *usual al-amaliyya* is used where there is no way for deriving laws from the valid sources.⁴⁰¹ As was mentioned above, fiqh refer to the four sources of the Book, the Sunna, the Consensus and the Reason for deducing the laws. Sometimes in their referrals to the above sources the jurists are successful and sometimes they are not. In other words; "sometimes the he [jurisprudent] attain the actual law in the form of certitude or a reliable probability, which means a probability that has been divinely endorsed. However in some cases he [jurisprudent] is unable to discover the duty and the Divine Will from the four sources, and he remains without a defined duty and in doubt. In these cases what must be done? Has the Lawgiver [God] specified a certain duty in the case of the actual duty being out of reach?"⁴⁰² Shia *usul al-fiqh* has a certain section for such conditions. As we witnessed in the part of 'the Principles of Deducing' *usul al-fiqh* talks about the correct and valid method of deducing the laws, and in the section concerning the Principles of Application it talks about the correct way of acting in a situation where the religious duty is not clear. The Principles of Application are fourfold:

- 1- The Principles of Exemption (*Bara'at* برائنه)
- 2- The Principle of Precaution (*Ihtiyat* احتياط)
- 3- The Principle of Option (*Takhyir* تخيير)
- 4- The Principle of Mastery (*Istishab* استصحاب)

The Principle of Exemption means that the believers are initially released from any obligation and duty if they have not been told otherwise. The Principle of Precaution requires that the believers must act according to precaution, which means that the

⁴⁰¹ Motahari, *Usul fiqh*, p. 24.

⁴⁰² Motahari, *Jurisprudence and its principles*, p. 23.

believers must act in such a way that if a duty actually exists as a law, they have performed that duty. The Principle of Option means that the believers have the option to choose one of two or more things, whichever they like if all of them are equally acceptable by the religion or the religion is silent about all of them equally. Finally the Principle of Mastery means ignoring any doubt as far as no definite evidence has opposed the original state. The above 'Principles of Application' are of significant importance because on many occasions it is not easy to find the definite ruling of fiqh and therefore one of above principles might be applicable.⁴⁰³ In the case of jihad, if jurists are not able to include a certain case of violence –suicide terrorism to be the example here- as a form of jihad (in a definite and indubitable way), then according to the Principle of Mastery such a case cannot be justifiable by jihad. It is because we know that self-explosion was not a way of waging jihad in time of absence of explosives, then based on the 'Principle of Mastery' it cannot be included in jihad. That being the case, since suicide operations are a contemporary phenomenon there is an onus on advocates who support it as a form of jihad who need to bring definitive religious proofs for it and those who reject its inclusion in jihad do not need to provide religious argument for its exclusion.

Consensus (*Ijma`* الاجماع)

Ijma` or Consensus means the unanimous view of Muslims on a particular issue and is considered as one of the sources of Islamic laws by both Sunni and Shia jurists. Although *Ijma`* is accepted by all scholars of jurisprudence among both Sunnis and Shias it does not mean that all legal schools understand Consensus the

⁴⁰³ Ibid, pp. 23-4.

same way. While a majority of Muslim ulama argue that consensus is a proof in its own right, based on a saying of the Prophet that: “*My umma (nation) will not consensus on the wrong*”⁴⁰⁴ the other part of ulama have a different opinion in this regard and accept Consensus conditionally. According to the first group if all Muslims are in agreement upon a certain point of view about a subject in one period, even in this period of ours, their view is definitely correct. They believe that it is possible for some of the nation to err, and some not to, but it is not possible for all of them to be in agreement on error. According to this perspective complete agreement of all the Muslims in one period is ruled as divine revelation; thus all the Muslims at the moment of consensus are treated in effect as having the same status as the Prophet and that which is revealed to them is the law of God.⁴⁰⁵

Shia usuli jurists do not maintain the same principle of consensus that the Sunni ulama maintain. For Shia the testimony of consensus is binding only if it is the means of discovering the *Sunna*. In the view of Shia jurists whenever there is no proof in the Quran and the Sunna about a certain subject but it is known that the general body of the Muslims or a numerous group of the companions of the Prophet or those companions of an Imam all used to act in a particular way, it can be a proof that in those times there existed an instruction of the *Sunna* which we are unaware of. Then in the opinion of the Shia *usuli* ulama consensus is binding because if all the Muslims have one view this is proof that the view has been received from the Prophet or the Imams. It is impossible for all Muslims to share the same view on a

لا تجتمع امتي على الضلالة⁴⁰⁴

ابن سعد قرطبي، تفسير قرطبي، جلد ۶، ص ۲۲۱.

همه امت در حکم شخص بیغیرند و معصوم از خطا می باشند. قول همه امت به منزله قول بیغیر است. همه امت⁴⁰⁵ مجموعاً در هنگام وحدت نظر معصومند.

Motahari, *Usul fiqh*, p. 36.

matter if it came from themselves and thus their consensus is a proof of the origin of that view being the *Sunna* of the Prophet or the Imams therefore it is binding. As such for Shia *usuliyyun* consensus is not genuinely binding in its own right rather it is binding in as much as it is a means of discovering the *Sunna*.⁴⁰⁶

Reason

The role of reason is of utmost importance in Shia jurisprudence. As we observed above Shia Principles of Jurisprudence consists of two main parts: the ‘Principles of Deducing’ and the ‘Principles of Application’. The Principles of Application are essentially reason-based and at the same time the presence of reason in Principles of Deducing is to such an extent that all sources of deducing the religious laws are divided into two categories: the Narrated and the Reasoned. The Narrated sources are relevant to all the discussions focused on the Book, the *Sunna*, and the Consensus, while the Reasoned part is related to reason. It is necessary to bear in mind that role of reason is not limited to the Reasoned source of law and that reason is not only an independent source of deducing laws but it is an assistant in deducing laws from the first three sources of law as well. The ratiocinations used for deducing any new law from those three sources – namely the Book, the Sunna and the Consensus – are in one way or another included in intellectual activity by nature. We will talk shortly about this intellectual activity of deducing detailed laws from above valid source, which is called ‘ijtihād’, in the next section. What we are going to discuss in this section is Reason as the fourth source of the Islamic Law for the Shia *usuliyyun*.

⁴⁰⁶ Motahari, *Usul fiqh*, p. 37.

It is necessary to mention that Shia jurisprudence, unlike other schools of Islamic jurisprudence, recognizes reason as one of the main sources for deducing religious laws.⁴⁰⁷ Shia *usulis* argue that wherever that reason has a clear ruling then that regulation is both ‘religiously’ as well as ‘morally’ binding.⁴⁰⁸ As such the Binding Testimony of Reason in the Shia *usuli* view means that if in a set of circumstances reason has a clear rule, then that rule (because it is definite and absolute) is binding as a religious duty. For example if there is no religious ruling but human common sense sees a serious harm in something then it follows that that thing is religiously prohibited because the Law Giver (God) wants the good for his creature then avoiding such harm is God’s will. To reach this result jurists form a logical syllogism and then conclude what human reason understand as absolutely (without any doubt) as good or bad it is considered religiously the same:

Premise number one: God wants the good for his creatures.

Premise number two: this specific thing is harmful (not good).

Conclusion: this specific thing is religiously prohibited.

This is called the “Principle of Correlation” or “whatever is ordered by Reason is ordered by Religion and vice versa”.⁴⁰⁹ The ‘Principle of Correlation between Reason and Religion’ indicates that by means of the deduction and logic of reason we discover that in a certain instance a certain necessary law or prohibitive law exists which human common sense has no doubt about then that law is Divine Will and religiously binding.⁴¹⁰

⁴⁰⁷ Reza Aslan, *No god but God*, p. 184.

⁴⁰⁸ Motahari, *Usul fiqh*, p. 16.

⁴⁰⁹ ما حكم به العقل حكم به الشرع و ما حكم به الشرع حكم به العقل

⁴¹⁰ Motahari, *Usul fiqh*, pp. 38-43.

Although Sunni schools of law use reason in deducing law it is not an independent source of law for them. Amongst the Sunni ulama, Abu Hanifa considered Analogy (*qiyas*) to be the fourth proof. Thus in the view of the Hanifi School the sources of jurisprudence are four: the Book, the *Sunna*, the Consensus and Analogy. We discussed previously that Abu Hanifa believed in an independent role of reason in deducing laws but what was left of his heritage was only ‘Analogy’ as a technique which al-Shafi`ei developed to a greater extent. The Maliki and Hanbali Sunnis, especially the later, do not pay that much attention to Analogy. The Shafi`ei School pays more attention to Traditions than the Hanafis and also more attention to Analogy than the Malikis and Hanbalis do, but for Shafi`ei an Analogy is only a tool for deriving rulings from the main sources of the Book and the Sunna and not an independent source as such.⁴¹¹

Ijtihad (الاجتهاد)

Literally, *ijtihad*, like *jihād*, is a derivative of J-H-D meaning ‘to strive’. In the Islamic juristic literature *ijtihad* means the independent reasoning for determining rules of conduct based on the Divine Will. This first-hand and independent reasoning can be named as the ‘original *ijtihad*’ to distinguish it from what became popular after the early *mujtahids* and founders of the Islamic legal schools who performed *ijtihad* in its true sense. There is also a less original intellectual activity in deriving the rules of conduct from the source materials of the five established schools of law (and not going behind these source materials) which should be called the ‘common *ijtihad*’ as against the ‘original *ijtihad*’. As for the necessity of *ijtihad* in the first place it is enough to say that since the divine revelation came to an end

⁴¹¹ Ibid., p. 43.

with the demise of the Prophet, *ijtihad* was the main instrument of interpreting the divine message and relating it to the changing conditions of the Muslim community. Muslims jurists believe that *ijtihad* was validated by the Prophet himself and in this regard they point to the many traditions on the authority of *ijtihad*. The most famous of such traditions is the Prophet's approval of the Muadh's *ijtihad* which provides clear authority in this regard. The tradition indicates that upon sending Muadh ibn Jabal as judge to the Yemen, the Prophet asked him about the source on which he would rely in making decisions. In reply Muadh referred first to the Quran, then to the Sunna of the Prophet and finally, in the event where he failed to find the necessary guidance in either of the two, then he would formulate his own *ijtihad*. The Prophet approved of this and was well pleased with Muadh's response.⁴¹²

The first mujtahids (those who do *ijtihad*), as discussed before and based on their approach toward the divine message, were divided into *ahl-al ra'y*, or people of personal reasoning, and *ahl al-hadith*, or people of Tradition. The former group of mujtahids were relying on reason on discovering the divine will for determining the right conduct of a believer in different situations while the latter were relying on the Prophetic traditions for that purpose. While *ahl al-ra'y* had the upper hand at the early stages of the manifestation of *ijtihad*, (and actually were its first founders) gradually, and following the collection and fabrication of more Prophetic traditions, they lost ground to traditionists who restricted and fixed the mechanisms of reaching the divine will; they rejected the continuation of the 'original *ijtihad*' and replaced it with the 'common *ijtihad*' as will be discussed hereunder.

⁴¹² Abu Davud, *Al-Sunan*, Tradition number 3592.

In the history of Islam, as it seems to be the case with other major religions as well arguably, there are many cases in which over time the contents change dramatically but the names and titles remain the same. This creates serious problematic confusion for those who want to study such cases. Ijtihad, in my opinion, is one of the most outstanding of such cases. While in the early forms of ijthad, for example, *mujtihad*s were enjoying a huge amount of intellectual freedom to challenge pre-suppositions considered categorical by their predecessors later so-called mujtahids were only re-wording opinions of the previous generations and obeying their pre-suppositions without challenging them.⁴¹³ I think, although such a limited intellectual activity still enjoys the title of ijthad, this latter form of limited intellectual activity actually is little more than a highfalutin ‘imitation’ wrapped in title of ‘ijthad’.

Theoretically and because of role of ‘Reason’ in Shia jurisprudence as an independent source of law, original *ijthad* as following independent juristic reasoning by Shia *usuliyyun*, is what differentiates Shia Juristic School from Sunni schools of law.⁴¹⁴ Shia scholars of *usul*, in addition to the affirmative Prophetic traditions in favour of ijthad believe that it was Jafar al-Sadiq (the sixth Shia Imam) who established the principle of ijthad in its juristic term; therefore for them ijthad enjoys much more authenticity than it does among their Sunni counterparts.⁴¹⁵ Shia scholars of *usul* criticize ijthad in Sunni schools of *fiqh* to be only a limited technique of analogical reasoning (*qiyas*) rather than the processes of independent reasoning that the jurist employs in order to arrive at the best guess of what he

⁴¹³ Mohammad Hashim Kamali, *Shari‘ah Law: an Introduction*, Oneworld Publications 2008, p. 304.

⁴¹⁴ Aslan, *op cit.*, p. 184.

⁴¹⁵ *Ibid.*

thought might be the law pertaining to a particular case.⁴¹⁶ As independent reasoning within the Shia Usuli school of jurisprudence *ijtihad* is theoretically not restricted to any specific technique as Sunni schools are limited to. However in reality there is no (or very limited) *ijtihad* in its true sense performed by Shia jurists nowadays; what is presented in the name of *ijtihad* is often little more than a repetition of the opinions of classical jurists. Thus it is not much more than imitation or *taqlid* (while it is forbidden for jurists to do ‘imitation’ directly according to the Shia jurisprudence itself). Despite all obstacles before the concept of ‘original *ijtihad*’ in both Sunni and Shia schools of law it seems Shia school of jurisprudence (at least in theory) has more potential to restore ‘original *ijtihad*’ because it is less restricted to certain techniques in reasoning, namely *qiyas*, and also because ‘Reason’ is recognized as an independent source of law in Shia Islam.

Mujtahid vs faqih

The titles of ‘mujtahid’ (as the one who practices *ijtihad*) and faqih (as jurist or expert in *fiqh*) are used interchangeably these days.⁴¹⁷ Mujtahid is supposed to be the one who is qualified to exercise independent reasoning or *ijtihad*. Nowadays the door of *ijtihad* is widely considered closed and independent reasoning in its true sense is not practiced, and what we have are really only faqihs, as experts of Islamic law, and not mujtahids.⁴¹⁸ The confusion between faqih and mujtahid is another instance of the neutralization of very axiomatic Islamic intellectual concepts. When faqihs present their act of ‘copy-paste’ of old rulings as *ijtihad* they ruin the ground for real *ijtihad*. The story of *ijtihad* reminds us of *kalam* when the arch-traditionist

⁴¹⁶ Wael B. Hallaq, *An introduction to Islamic Law*, Cambridge University Press, 2009, p. 27.

⁴¹⁷ Motahari, *Usul fiqh*, p. 10.

⁴¹⁸ Salehi Najafabadi, *Jihad*, p. 213.

Asharites, as the most severe enemy of kalam, simply called themselves ‘mutikallim’ or partisan of kalam and killed off any possible ‘free thinking’ based on true kalam. This game of twisting debugging concepts by traditionalist Asharites and turning them against their very essential philosophy is a skill that anti-intellectual literalists deploy in case the weapon of ‘excommunication’ does not bring the desired result in isolating rationalists.

Hierarchy of Shia jurists

For centuries it was fiqh and its related fields of study including Arabic Literature and Grammar, Hadith, Rijal, Quranic Studies, Islamic History with focus on the Prophetic Biography, Logic and so on which were the only organized education in a big part of the Islamic world. Of course other necessary fields such as Medicine, Mathematics, Physics, Astronomy and few other experimental fields were popular among intellectuals but they seldom enjoyed the same continuous chain of systematic education with recognized degrees and hierarchy which fiqh did.⁴¹⁹ Nowadays, as it is the case with other parts of the Islamic world, classical Islamic studies including study of fiqh and its relevant courses, are marginalized by modern secular education in Shia countries as well. Still it does not mean that jurisprudential studies in Shia Muslim countries including Iran (as the main hub of Shia Islam) is in full standstill. For example according to the Iranian ‘Pupils Association News Agency’ (PANA) Iran has 12,269,793 students receiving education in 104,000 modern schools⁴²⁰ and another 4,116,000 university students⁴²¹ receive training in 2276 modern universities, higher education centres and polytechnics⁴²². At the

⁴¹⁹ Motahari, *Usul fiqh*, p. 85.

⁴²⁰ <http://pana.ir/Pages/Printable-News-83860.aspx>

⁴²¹ <http://eyvazian.ir/1390/06/30/>

⁴²² <http://www.unp.ir/news/university/university-news/12377>

same time around 150,000 Iranians are graduates of classical Islamic educations or are receiving such education.⁴²³ In recent years the number of new students entering the Islamic seminaries has grown significantly. According to the report released by the official centre in charge of the Islamic seminaries, *markaz-e howzehay-e elmiyyeh*, these seminaries were expected to have around 15,500 new students in 419 seminaries around the whole country in 2015⁴²⁴ which shows a sharp increase in number of new students joining the Islamic classical studies (of course if this number get met in full). The number of those who receive Islamic classical studies is notable although still low comparing to those who receive modern education. According to the 2011 Iranian National Census out of overall 65 million of the population of age 6 and above more than 60 million (around 93%) of them have received modern education.⁴²⁵ This means that around 0.2% of the whole Iranian population have received or are receiving Islamic classical education. It is remarkable that this tiny population of less than half a percent have such a strong presence in the governing body of the country.

Shia Islamic classical studies, which is fundamentally based on fiqh, constitute of three duration of teaching courses. Each of these durations normally takes five years to complete. In addition to the teaching educational durations, there are also two duration of education by research which each roughly takes around five years each. However, unlike the teaching durations the research ones are more flexible (and usually do not have a strict time limitation). These arrangements which were laid out by the founder (or restorer in more accurate meaning) of the Qum Seminary,

⁴²³ <http://ruhaniat.parsiblog.com/>

⁴²⁴ http://howzeh.org/news/hawzahqom_16656/318515/

⁴²⁵ <http://www.tabnak.ir/fa/news/268021>

Haeri Yazdi (d. 1937) for the first time have faced some changes since then. Haeri Yazdi merged several madrasas and established the biggest Iranian seminary in 1921. Despite all changes the main structure, more or less, has survived until now. The five grades of study of fiqh and its related fields that provides the qualification for practicing ‘ijtihād’ are as follows:

Grade one: 5 years of study of *muqaddmat* or preparational/ preliminary studies

Grade two: 5 years of *sath* or intermediate studies

Grade three: 5 years of *kharij* or advanced studies

Grade four: 5 years of research on one single field of fiqh and reaching level of ijtihad in that specific field which accordingly is called ‘partial ijtihad’ and the one reaching this level is called *Mujtahid-e Mutejazzi* or ‘partial mujtahid’.

Grade five: minimum 5 years of broad research on all fields of fiqh and reaching level of ijtihad on all fields of fiqh which because of its inclusivity is called ‘absolute ijtihad’ and the one who has reached this level is called *Mujtahid-e Mutlaq*.

The graduates of the first grade are called *Rouhani* or *Akhound*, graduates of the second level are called *Thiqat al-Islam*, graduate of the third grade are called *Hujjat al-Islam*, graduate of the fourth grade are called *Hujjat al-Islam wal-Muslimin*, and graduates of the fifth grade are called Ayatollah. Those Ayatollahs who are popular and have big number of followers among Shia Muslims are called the Grand Ayatollah or *ayatollah al-udhma* or marja’ *taqlid*. In Shia Islam it is only a Grand Ayatollah who is allowed to release fatwa. This is the main reason why in Shia Islam we do not witness graduates of engineering or medicine releasing fatwas on religious issues for example, as is the case within Sunni Islam. Fatwas of people in position of Usama bin Laden and Aiman al-Dhawahiri for instance, will not find

any echo in the Shia world simply because their promulgator has not passed the stages which qualify them to issue fatwas.

In addition to a carefully defined hierarchy, in Shia Islam there is also a strict code of dressing for the clergy. Graduates of the first level should put a long garment, namely *aba*, and a skullcap, called *araqchin*, on to distinguish them from others. Graduates of the second level of classical Islamic studies are allowed to wear turban. For those descendants of the Prophet the turban must be black and the title of ‘Seyyed’ is added to their names. Those who are not descended from the Prophet must wear white turbans and title of ‘Shaikh’ is added to their names. For example the Grand Ayatollah of Iraq is called Ayatollah al-Udhma Seyyed Ali al-Sistani. This is why the former president of Iran who is not a descendant of the Prophet and is not a *marj’a taqlid* is called Ayatollah Shaikh Akbar Rafsanjani.

Recently a new system has been introduced to some seminaries which is closer to the modern international education system and constitutes of four grades and starts after graduation from the modern intermediate school: preliminary (6 years) equal to post high school diploma, intermediate (3 years) equal to Bachelor degree, advanced (2 years) equal to Masters Degree, and research degree (6 years) equal to PhD.

Students of fiqh usually complete their preliminary studies in the seminary closest to their place of residence. To complete the intermediate studies they usually go to more famous centres, whilst for undertaking the advanced studies they can find top experts to supervise their researches only in one of two centres: usually Najaf in Iraq and Qum in Iran, and occasionally in few other major centres of Islamic studies such as Mashhad.

Ijtihad as divider of Usulis and Akhbaris

In this research we study Shia jurisprudence from an ‘Usuli perspective’. Thus, we need to briefly explain what distinguishes the Usulis from others. Like their Sunni counterparts Shia jurists are divided to pro-reason and anti-reason, as another naming for *ahl al-ra’y* and *ahl al-hadith* or rationalists and traditionists. The Shia jurists of *ahl al-ra’y* are called Usuli and the *ahl al-hadith* ones are called *akhbari* or traditionist. In the Shia camp the *ahl al-ra’y* or Usulis have the absolute upper hand⁴²⁶ unlike the Sunni camp where the *ahl al-hadith* enjoys supremacy. What divides Shia Usulis from their traditionist counterparts is concept of ‘ijtihād’. While today ijtihad is almost a unaminously agreed principle of Shia jurisprudence for years Shias were divided over this issue into the Akhbari School and Usuli School.⁴²⁷ Unlike Akhbaris, the Usuli School not only supports the use of ijtihad in issuing religious laws but also bases the whole jurisprudence on ijtihad. Usulis use reason as tool for ijtihad: the famous conviction of: “whatever is ordered by reason, is also ordered by religion and whatever ordered by religion, is also ordered by reason”⁴²⁸ is a clear indication of importance of role of reason in Shia Ijtihad.

While Shia Usulis emphasize on ijtihad based on reason as the main way of deriving religious duties Akhbaris reject any form of ijtihad and believe that Muslims must literally follow traditions of the Prophet and Imams without any interpretation or personal reasoning of “ijtihād”.⁴²⁹ More than that Akhbaris also reject any direct reference to the Quran and believe that ordinary people should directly refer to the traditions for deriving rulings because only the Prophet and Imams can understand

⁴²⁶ Motahari, *Usul fiqh*, p. 13.

⁴²⁷ Asalan, *No god but God*, p. 184.

⁴²⁸ ما حكم به العقل حكم به الشرع و ما حكم به الشرع حكم به العقل

⁴²⁹ Motahari, *Usul fiqh*, p. 17

the Quran fully.⁴³⁰ As such Akhbaris reject the concept of *ijtihad* fundamentally and consequently refuse any necessity for role of experts, or *mujtahids*, in deriving appropriate rulings for ordinary people. Since Akhbari School rejected employment of *ijtihad* altogether then it requires the jurisprudence to be based directly on the traditions of the Prophet and Imams, meaning that such traditions replace verdicts of *foqahah*.⁴³¹

The main figure of the Shia traditionist school, or Akhabri, was named Amin Astarabadi and his theory of ‘rejection of *ijtihad*’ is explained in his book of *Fawaid al-Madaniyya*.⁴³² To conclude it should be said that *ijtihad* is the characteristic of Shia *Ushulis* and distinguishes them from the camp of Shia traditionists who reject *ijtihad*. Whatever that we discuss regarding the viewpoint of Shia jurisprudence in this research is based on the ‘*Usuli perspective*’.

Conclusion

It is hoped that the above discussion has sufficiently demonstrated the differences between Shia and Sunni jurisprudential schools and also the differences among Shia themselves. Although, in theory, ‘Reason’ has enjoyed a central position in the Shia jurisprudence it is unrealistic to describe the current Shia jurisprudence as a fully ‘rationalist jurisdiction’. Despite the grandiose superscription of theoretical role of Reason in Shia jurisprudence, in practice, the role of reason has turned into a shallow title with limited actual outward result. What Shia jurists today do is little more than a mere imitation of the great ancient jurists. Their only initiative is that they try to find rulings for new conditions based on *ijtihad* of the early jurists. Then

⁴³⁰ Ibid, p. 13.

⁴³¹ Asalan, *op cit.*, p. 184.

⁴³² Ibid, p. 13.

their *ijtihad* in its current form is, at the best, an informed commentary on the *ijtihad* of the early jurists and not as independent reasoning any more. For the contemporary Shia jurists two of the four sources of *fiqh* are not considered actual sources any more. These sources are divided into primary sources which are the Quran and the Sunna, and the secondary sources, which are *ijma'* and *aql*. The function of the secondary sources is little more than extracting rulings for new situations from the primary sources (the Quran and the Sunna). Due to this it is better to say that even 'Usuli Shia jurisprudence' lacks element of 'independent reasoning' or 'original *ijtihad*' as it should.

Chapter Eight

Fiqh as divine law: Liturgical Nature of Jurisprudential Jihad

Introduction

In an empathetic approach we should bear in mind that, for those who see products of jurisprudence as Divine Will, the technical language of jurisprudence is of a substantial importance. Even the smallest difference in the arrangement or composition of the words can change the meaning significantly. Not all issues covered by jurisprudence are of the same significance. To know level of significance of each jurisprudential ruling we need to familiarize ourselves with the language of jurisprudence. In this chapter we will, briefly, introduce the language that Shia jurisprudence uses in transferring its demands and commands. Before entering the section related to the practical duties of believers, jihad one of them, first we must be familiar with different categorisations and segmentations of Shia jurisprudence and their importance. This section is arranged according to Motahari's book of fiqh⁴³³ which is better organised when compared to the classical jurisprudential books which have all these details but not in a coherently structured style.

⁴³³ Mortaza Motahari, *Ashenaei ba ulum-e islami* (3); usul-e fiqh, fiqh, Sadra Publications, no date, pages 51 onward.

I have used the following translation of the Motahari's book as well: Morteza Motahari, *Jurisprudence and its Principles*, trans. Salman Tawhidi, Tarikhe Tarsile Quran publications, no date.

The nature of divine laws in Shia jurisprudence

In Shia jurisprudence, divine laws have different natures and according to their particular nature are divided into various categories. One of the first classifications divides divine laws into: the laws of human duty (*ahkam taklifi* احكام تكليفي) and the laws of human status (*ahkam wad'i* احكام وضعي). The laws regarding duty consist of 'do's' and 'don'ts'. According to Shia jurisprudence (similar to its Sunni counterpart) no single action is empty of one of the following five *taklifi* laws: either it is obligatory (*wajib* واجب), or it is forbidden (*haram* حرام), or it is desirable (*mustahab* مستحب), or it is undesirable (*makruh* مكروه) or it is permissible (*mubah* مباح). They are termed as the "five laws" (*ahkam khamsah* احكام خمس). [See Appendix No. one for more detailed information] The laws regarding status, or *ahkam wade`i*, are those laws which are related to one's *status* rather than actions. For example, for the one who is in a marital situation or has ownership of something, there are laws which are exclusive of such situation per se.⁴³⁴

As we learnt before jihad has different meanings in different Islamic contexts. While for Mysticalists and Theo-ethicalists jihad is not about warfare in jurisprudence, as will be shown later, jihad means only warfare.⁴³⁵ In Shia jurisprudence all possible actions are seen from one of the above mentioned *ahkam taklifi* of *wajib*, *haram*, *mustahab*, *makruh* and *mubah* categories. Jihad in Shia jurisprudence, as will be discussed shortly, is *wajib*. As such and since jihad in Shia jurisprudence is categorized as a religious obligation or *al-amr al-wajib*, I focus here on the categorizations of obligatory laws.

⁴³⁴ Morteza Motahari, *Jurisprudence and its Principles*, p. 28.

⁴³⁵ Allama Hilli, *Tabsera al-mutallimin*, p. 79.

Obligatory laws, in turn, are divided into several different classifications. Firstly, they are divided into *ta'abbudi* (تعبدی) and *tawassuli* (توسلی). *Ta'abbudi* includes those obligatory laws of which the correct and valid performance depends upon the intention (*niyyat* نیت)⁴³⁶ of nearness to God, and without that kind of intention is not valid and one's duty has not been fulfilled. Daily prayers and fasting, for example, are both "*wajib ta'abbudi*". *Wajib tawassuli* refers to the fact that the performance of the obligation matters in and of itself, such that even if performed without the intention of nearness to God, still the obligation has been met. For example, since absolute loyalty to all one's promises is a religious obligation, should a person undertake to do a certain work in return for a certain payment then the undertaking or performance of that work is enough to meet his religious duty as well, and so there is no need for an additional intention of proximity to God. It is the same with paying off a debt, for example.⁴³⁷

Obligations can also be divided into exact [on individual], or '*aini* (عینی), and communal [collective], or *kifayah* [*kifaei* (کفایی) in Persian] categories. An '*aini* obligation means that such law is obligatory on each and every individual. Daily prayer and fasting, for example, are of '*aini* obligations. *Kifaei* obligation is that which is obligatory for the general Muslim population, and which, when performed by an individual or a group, there is no sense of specific obligation laid upon any one for that. Such types of obligation are usually related to the needs of the community as a whole. A clear example can be when a dead body is left unburied. While the body is

⁴³⁶ It means that the action is performed solely with the intention of nearness to God without any worldly or material motive.

⁴³⁷ Motahari, *op cit.*, pp. 28-9.

unburied it is a collective duty of all capable Muslims to do the job. If this duty is fulfilled by some, there is no longer an obligation for others. However if the deed is undertaken improperly all qualified members of the society are sinful because of a failure to fulfill their religious duty. The level of *kifayah*, or sufficiency, in this case is the proper burial of the dead body and until then all qualified persons are responsible toward that objective.⁴³⁸

Another way that the obligations are divided is into specific, or *ta`yini* (تعينى) and optional, or *takhiyiri* (تخييرى). A *ta`yini* obligation is when a specified thing must be performed, like the daily prayers, and it cannot be replaced by anything else. A *takhiyiri* obligation on the other hand, means that the duty-bound individuals and groups are to perform one thing out of two or several things. For example, if a person has intentionally not fasted one day during the fasting month (Ramadan), it is a *takhiyiri* obligation for him either to feed sixty poor people or to fast for two months or, as in previous times, to free a slave. In this case when fasting itself is a *ta`yini* obligation its atonement is *takhiyiri* and the duty-bound can choose of several options to fulfil his/her religious duty.⁴³⁹

Obligations are also divided is into *nafsi* (نفسى) and *muqaddami* (مقدمى). A *nafsi* obligation means that the duty matters by itself while a *muqaddami* obligation is obligatory for the sake of something else. Canonical prayers, for example, are *nafsi* obligations, while to take ablution, *Wudu* (وضو) in order to enter the state of cleanliness necessary for the performance of prayer is not obligatory until the time of prayer has begun. Then *Wudu* (ablution) which is

⁴³⁸ Ibid, p. 29.

⁴³⁹ Ibid.

not obligatory in and of itself, becomes mandatory as preparation for the obligatory prayer.⁴⁴⁰

In order to discuss Jihad as a religious obligation, we should bear in mind that depending which category nature of jihad belongs to, the term ‘jihad’ can have different dimensions and forms. Shia jurists usually confine themselves to mentioning religious duties without discussing the nature of them. The silence of jurisprudence with regards to a detailed explanation of the nature of each individual law provides the opportunity for those who want to modify the practical outcomes of such laws when they find it difficult to modify the law itself. Then even if the law is well accepted and unalterable, still the discussion over its nature can make significant differences in practice. In our case of study, for instance, if jihad is supposed as a fixed religious obligation and as such there is no way to remove it from the religious system there is still a great chance to modify its outward consequences by challenging its nature as a religious duty. Below I will mention some examples of how outward result can be affected when jihad is moved from one categorization to another.

For example if jihad is considered as an *`aini* obligation then all qualified⁴⁴¹ populations of Muslims must be engaged in jihad all the time. However if it is considered as a *kifaei* obligation then in addition to its effect on the number of those who will become engaged in jihad (which is the primary interest of jurisprudence) another important issue emerges as well. This second issue,

⁴⁴⁰ Ibid, pp. 29-30.

⁴⁴¹ In Shia jurisprudence only mature, male, healthy, sane, free, capable persons are qualified for jihad. This will be discussed in section of jihad soon.

which is as important or even more important than what is the concern of jurisprudence, is the embedment of a goal for jihad whereby fulfilling it is the criterion for measuring the religious duty of the individuals concerned as fulfilled. As we discussed above the goal of the religious duty in the case of a “dead body”, as a “collective duty” or *wajib kifaei*, is the proper burial of that body. The “proper burial”, for example, can be done both manually by several people engaged or one person doing it using a machine and this part is not of interest to jurisprudence provided the goal is achieved. In the case of jihad, while it is difficult to challenge jurists regarding other rulings related to jihad, it is easier to challenge them in regard with goal of jihad as a *kefaei* obligation. Without the clear determination of a concise goal, the element of ‘*kifayah*’, or sufficiency, as a measuring criterion, will be absent. Determining the right criteria as the “point of sufficiency” or *kifayah*, for jihad is the salient point where there is enough opportunity to not only affect but also determine both form and consequences of *kifaei* jihad. For example putting a just goal for jihad, as the point where meeting it is sufficient for the religious duty to be fulfilled, is easier to contain destructive consequences of jihad in its jurisprudential form than by engaging in technical debates over other details or bargaining/begging jurists to put their fatwas on hold temporarily – because they cannot cancel such fatwas permanently anyway.

Regarding the difference between the *tawassuli* and *ta`abbudi* natures of jihad for example, whereas jihad as a *tawassuli* obligation targets an intended result, *ta`abbudi* jihad relies merely on the intention of proximity to God, regardless of the result. A *tawassuli* jihad can be executed /fulfilled by non-Muslims as well because it is only a tool for achieving the result. The words

Tawasul and '*wasylah*', meaning the use of a tool for undertaking something, are from the same root. In *tawasuli* obligations it is the result that matters and the action is only a tool that should be assessed according to the degree of achieving the result. If jihad be considered as a *tawasuli* obligation then the whole focus goes to its ultimate goal rather than to the particular form of jihad itself.

Regarding the difference between considering jihad as a *nafsi* or *muqaddami* obligation, again the outcomes can be quite heterogeneous. For instance if jihad is considered as a *nafsi* obligation, then it would be rigid and unmodifiable. On the other hand, if jihad is considered as a *muqaddami* obligation with respect to keeping the Islamic society safe and developing, as the ultimate obligation, then the story will become quite different. A *muqaddami* obligation has no value of itself but seen obligatory as a necessary prelude for a greater and main thing. If we consider jihad as a *muqaddami* obligation then self-defense, the promotion of religion, and the expansion of the Islamic lands and so on may be among the main ultimate obligations. Accordingly if each of the possible ultimate obligations are examined and critiqued effectively then there is no need to examine or critique jihad as such as the ground element.

The difference between the *ta'yini* and *takhyiri* nature of jihad can be as significant as the other cases noted above. While jihad as a *ta'yini* obligation is quite rigid and has no flexibility, if jihad be understood as a *takhyiri* obligation for achieving certain goals, such as safeguarding the security of society, then the means of achieving such a goal can be quite flexible. In that case, for example, diplomacy can be considered as a way of waging jihad for

reaching the desired goal of security. To conclude I should repeat that there are interesting ways available to contain the potential negative consequences of jurisprudential jihad using jurisprudence itself through discussion over possible nature of jihad as a religious duty. I tried to point some of the most important ones here, however a proper investigation in this regard takes a full research.

Segmentation of Shia jurisprudence

Shia jurisprudential language, as seen above, is quite complicated. To know the stand of this jurisprudence on a specific issue we need to know where such an issue is discussed in the different sections of jurisprudential books. To find the position of Shia jurisprudence regarding an issue we need to take three main elements into account: first, the nature of such ruling; second, to whom the ruling applies (whether it is the individual or the society, including the government, which is responsible for fulfilling the duty); third, the number of parties engaged⁴⁴² in the ruling or its consequences. The first element divides rulings into worship-acts and non-worship acts. The second element divides rulings into commands and non-commands. The third element divides rulings into categories of contracts and non-contracts. I will show below how the way these three elements that divide the religious laws in Shia jurisprudence shape the segmentation of jurisprudential books. However, despite the clear criteria about the segmentation of religious rulings, not all jurists treat all rulings equally and in some cases there is considerable ambiguity and confusion involved. The confusion escalates when some locate a specific action within

⁴⁴² By engagement here it means those who their agreement or permission is required for the action to take place.

one segmentation but then load the requirements of other segmentations onto it. Jihad is an example of such confusion as will be discussed below.

Despite some cases of ambiguity and confusion, familiarity with the segmentation of the rulings is necessary in order to recognize the position and significance of different rulings in Shia jurisprudence. As a side advantage, it also enables us to find the ruling related to each specific action within the Shia jurisprudential texts. Knowing the position of different sets of religious rulings becomes more relevant when we notice that not all Muslims treat all sets of rulings the same as outlined previously. As mentioned, many Muslims do not believe in an all-encompassing jurisprudence, therefore they do not practice all the various sets of rulings. The jurisprudential segmentation of rulings, besides showing the level of importance of each ruling, also indicates who and how should practice each ruling. For example if an issue is categorized as ‘unilateral instigation’ or *iqā`* then no one can interfere but if it is a ‘bilateral contract’ or *aqd* then the second part or her/his representative/lawyer can interfere, and furthermore if it regards social issues or *hudud* then the government can or shall interfere.

Muhaqiq Hilli’s Segmentation of religious rulings

Apart from creed, or religious belief as such, and ethics, all subjects related to actions about which Islam contains instructions are included in jurisprudence. Thus the range of jurisprudence is extremely wide. To organize and structure this wide range of subjects Shia jurists have offered different classifications for the segmentation of religious laws. Among the most famous is Muhaqiq Hilli’s Classification which today is followed by the

majority of Shia jurists.⁴⁴³ According to this classification, introduced by Muhaqiq Hilli in his *Sharay`*,⁴⁴⁴ all the issues of jurisprudence are divided into four categories: acts of worship [worship rites], two-party contracts, one-party contracts and commands. This division has been based on the fact that all actions that must be performed in accordance to the Islamic law are either such that a condition of their validity is the intention of proximity to God, or it is something else.⁴⁴⁵ The four categories of jurisprudential rulings are in their turn subdivisions of the main categorization of actions into intention-based (liturgical or worship acts) and non-intention based (legal or non-worship acts) actions.⁴⁴⁶

With respect to the first group of actions it means that they must be done solely for God and if there is any other motivation for their performance the obligation is not fulfilled. More than that, it is only the intention of nearness to God which gives meaning to such actions and therefore such actions do not have any independent value in and of themselves. If an action does not belong to the above category it means that the mere performance is enough for fulfilling the religious duty. This second category again has its sub-divisions of contracts and non-contracts which the latter are called commands.

⁴⁴³ Motahari, *op cit*, p. 37.

⁴⁴⁴ Najm al-Din Jafar ibn Hasan famous as Muhaqiq al-Hilli, *Sharay` al-islam fil-halal wal-haram*, Ismaeilian publication (Qum), 1408LH (Lunar Hijri).

⁴⁴⁵ Motahari, *op cit*, pp. 36-7.

⁴⁴⁶ Intention here is different from the general good intention or good will that all Muslims are expected to keep in every aspect of their lives. Intention here is what turns a normal or even a meaningless action into a valuable one and the value exclusively belongs to the intention and not the action. Worship-acts are among such actions which without an intention behind them are quite meaningless. For example repeating some movements during a canonical daily prayer makes no sense by itself. It is a specific intention behind it which gives it a meaning.

Contracts in their turn are divided to bilateral contracts and unilateral contracts⁴⁴⁷ which will be discussed shortly.⁴⁴⁸

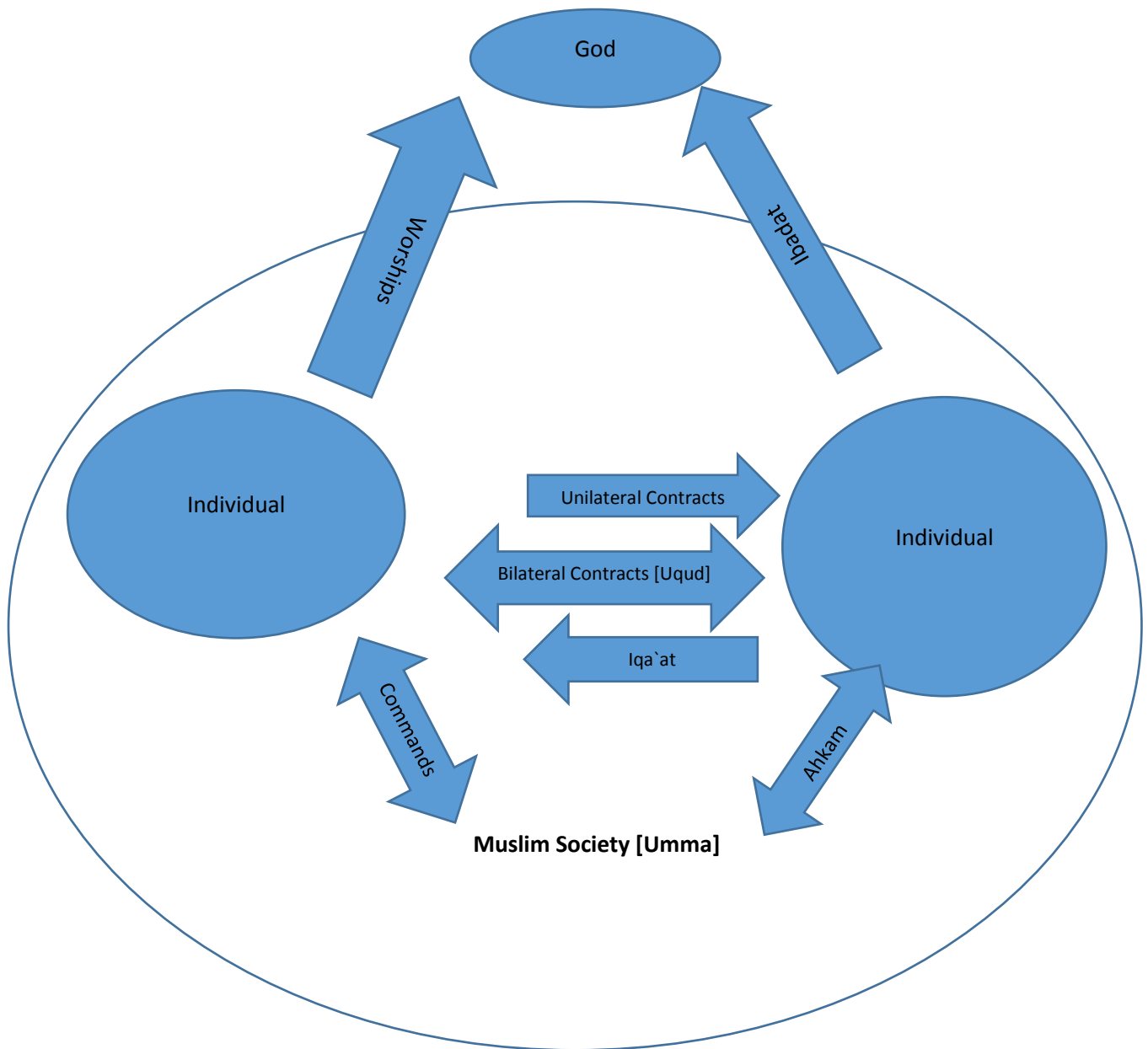
As was mentioned before, the first group of actions which require ‘*niyyat*’, or the intention of proximity to God, are liturgical or devotional actions, which in some quarters are called “worship”. These actions primarily deal with the inner rapport of men and women with God.⁴⁴⁹ With respect to devotional acts of worship, no third party, just God and the performer of the act, is involved. Such acts are called ‘*arkan*’ (اركان), or pillars, of Islam. There are four (excluding *shahada* which is not an ongoing act) that are unanimously accepted by all Muslims of different jurisprudential and non-jurisprudential schools as discussed before. These main rituals of Islam are: 1- The canonical prayers, or *salat* (صلاة) in Arabic and *namaz* (نماز) in Persian. 2- Fasting in the month of Ramazan, or *sawm* (صوم) in Arabic and *Rouzeh* (روزه) in Persian. 3- Pilgrimage of *Ka`bah* in Mecca, or *hajj* (حج). 4- The obligatory almsgiving, or *zakat* (زكاة). The shared part of jurisprudence between all schools is this part of basic rituals or *arkan*. Other than *arkan* some Muslims might not believe in or practice the other parts of the jurisprudence. Unlike the non-jurisprudentialists, who mostly confine themselves to the above mentioned four practices, or *arkan*, as obligatory worships, jurisprudentialists include more practices as obligatory worships as will be discussed hereunder. Usually around 10 actions are mentioned by jurists as ‘*ibadat*’ (عبادات), or worship acts, which will be discussed in the section related to acts of worship below.

⁴⁴⁷ Motahari, *op cit*, p. 37.

⁴⁴⁸ For more details see: Najm al-Din Jafar ibn Hasan famous as Muhaqiq al-Hilli, *Sharay` al-islam fil-halal wal-haram*, Ismaeilian publication, 1408LH.

⁴⁴⁹ Nasr, *Islam*, p. 28.

As mentioned above, non-intention based actions are of two types: either their actualization does not depend upon the execution of a special contract, or it does. Acts that do not depend upon the execution of a special contract, like inheritance, punishments (*hudoud*): retribution and so on, are grouped together in jurisprudence under the heading *ahkam* (commands). If they do depend upon the execution of a contract, then again they are of two types: either the contract must be recited by two parties, or there is no need for two parties and the contract is unilateral. If they are of the first type, like selling, hire, and marriage, they are called contract, or *`aqd* plural *`uqud* (عقود), in which one party states the contract and the other agrees. If, however, one person can carry it out alone with no need of another party to agree, like when one forgives one's debt, it is called unilateral instigation, or *iqa`* plural *iqa`at* (إيقاعات). The following chart illustrates how all aspects of the actions, indeed the entire life of believers' is covered by jurisprudence.



In ‘Hilli’s Classification of jurisprudence’ each of the four sections of jurisprudence which are: 1- *ibadat* (worship-acts), 2- *ahkam* (commands), 3- *`uqud* (contracts) and 4- *iqa`at* (unilateral instigations), have their own subdivisions and each subdivision is called a book. According to this classification the section on *ibadat* has 10 books, *ahkam* has 12 books, *`uqud* has 19 books, and *iqa`at* has 11 books. Since in all of those versions of Shia jurisprudence that follow Hili’s classification jihad is mentioned as a part of

ibadat, we will accordingly focus on the *ibadat* section. To show the environment surrounding devotional/liturgical acts in Shia jurisprudence I briefly mention the contents of each book of the liturgical category so that when we discuss jihad in this context, a better understanding may be achieved.

Liturgical Category (*Ibadat* عبادات)

There are usually ten books of devotional/liturgical acts in Shia Jurisprudence.⁴⁵⁰ I will describe each in turn.

1- The Book of Cleanliness (kitab al-taharah كتاب الطهارة)

The book of cleanliness discusses cleanliness from both a general perspective and cleanliness as a requirement for engaging in worship, and then if the worship or liturgical act is obligatory, the required cleanliness becomes obligatory as well. Cleanliness is of two kinds: being clean from external, non-inherent, material filth and pollution; and being spiritually clean of internal pollution. The first type of cleanliness refers to the body and the clothes of the performer of certain devotional actions being clean from the ten types of filth which include urine, faeces, blood, sperm, contact with corpses, and so on. All of these are termed *najasat* or filth. The second type of cleanliness means entering the state of purity by performing either the partial ablution (*wudu*), or total ablution (*ghusl*). Entering this state is a condition of certain forms of worship-act like prayer and the circumambulation of the Ka'ba during pilgrimage. Cleanliness of the second type is annulled by a series of natural things like sleep, urination, and sexual intercourse. The state

⁴⁵⁰ Zain al-Din al-Jubaei al-Amili famous as al-Shahid al-Thani, *Arl-Rawda al-Bahiyya fi sharh al-Luma al-Dimashqiyya*, Al-Adab Publications of Najaf, 1387L/ 1967.

of cleanliness must thereafter be re-entered before any worship act which requires it is undertaken. The first type of cleanliness, which is cleanliness from material filth such as urine and so on, is an on-going responsibility for a Muslim. A Muslim is supposed to keep his or her body and clothes clean from filth all the times.⁴⁵¹

2- The Book of Prayer (*kitab al-salat* كتاب الصلاة)

The Book of Prayer includes requirements, conditions, preparations, essential activities, preventions and delayers of different prayers. In this book both the obligatory prayers and desirable, or *nafilah* (نافله), prayers are discussed. Obligatory prayers are the five daily ritual prayers, the prayers of *'id ul fitr* and *'id ul adha*, the prayer for the deceased, the prayer of special signs such as earthquakes, and the prayer of the circumambulation of the Ka'ba. Unlike obligatory prayers which are fixed, the desirable prayers are not limited in number and can be undertaken in a range of circumstances as, for example, when thanking God for a happy situation, entering holy sites, and so on. Of course there are regular daily desirable prayers of which some are performed between the obligatory prayers, or late at night time on a regular basis. In the Book of Prayer the qualities of prayer, such as the prayer of a person when at his or her hometown and the prayer of a person who is travelling (traveller's prayer نماز مسافر), individual prayer and congregational prayer, the prayer offered at the right time (*ida* اداء) and the prayer missed and made up for after its time (*qada* قضاء) are all discussed in detail.⁴⁵²

⁴⁵¹ Motahari, *op cit.*, p. 38.

⁴⁵² Ibid.

3- The Book of Fasting (*kitab al-sawm* كتاب الصوم)

In a state of fasting, one must refrain from eating and drinking, from sexual intercourse, from immersing one's head in water, from breathing in dust intentionally, and from certain other things. Each lunar year during the month of Ramazan it is obligatory for every mature, sane person who is not ruled as an exception⁴⁵³ to fast each day from daybreak until sundown. However, other than the month of Ramazan fasting is generally desirable although on the festivals of *Eid ul-Fitr* and *Eid ul-Adha* fasting is forbidden, and on certain other days, like the day of 'Ashura, it is undesirable (*makruh* مكروه).⁴⁵⁴

4- The Book of pilgrimage (*kitab al-hajj* كتاب الحج)

The performance of the Hajj consists of 13 obligatory actions including, in this order of performance:

- 1- *Ihram*⁴⁵⁵ upon oneself in Mecca.
- 2- A stay in *Arafat*.
- 3- A night in *Mash'ar*.
- 4- The symbolic ceremony of throwing stones at the furthest (of three) boulders which represents Satan.
- 5- The sacrifice of an animal and giving the meat to needy.
- 6- The shaving of the head (or shortening the hair) for men and the cutting of a few curls for women.
- 7- Circumambulation (walking seven times around the Holy *Ka'ba*).

⁴⁵³ Those who are travelling or suffering from illness and also women during their monthly period or or having young child are exempt from fasting.

⁴⁵⁴ Motahari, *op cit.*, p. 38.

⁴⁵⁵ Wearing two simple white pieces on unsewn cloths for men and wearing white undecorated cloths for women and intention to start Hajj for nearness to God.

- 8- The prayer of circumambulation.
- 9- Walking seven times between the two hills of *Safa* and *Marwah*.
- 10- The final circumambulation.⁴⁵⁶
- 11- The prayer of the final circumambulation.
- 12- Throwing stones for a second time at the three boulders.
- 13- The night stays at *Mina*.

Hajj is obligatory for each Muslim who can afford to go to Mecca once during his or her lifetime.⁴⁵⁷

5- The Book of lesser pilgrimage (*kitab al-umrah* كتاب العمرة)

Umrah is a kind of Pilgrimage with fewer performances. *Umrah* is a desirable action which, unlike the obligatory pilgrimage, can be undertaken at any time of the year other than in the month of Hajj. The actions of *umrah* are as follows: Binding "*ihram*" on oneself at one of the special places (*mi'qat*)⁴⁵⁸; circumambulation; the prayer of circumambulation; walking seven times between *Safa* and *Marwa*; and, finally, the cutting of a few hairs or a fingernail or toe nail.

6- The Book of one-fifth tax (*kitab al-Khums* كتاب الخمس)

Khums is one of the two main Shia Islamic taxes. *Khums* and its homologous religious tax, *Zakat*, are obligatory for Muslims. *Khums*, which means a fifth, in the view of most of the Sunni Ulama refers only a fifth of the spoils of war that is to be transferred to the *bait ul-mal*, or public treasury of the Islamic

⁴⁵⁶ The final circumambulation, which is also called as *tawaf al-nisa`* (طواف النساء), is only done by Shias because Umar, the second Caliph banned it during his caliphacy and Sunnis follow his *ijtihad* on this issue.

⁴⁵⁷ Motahari, *op cit.*, p. 39.

⁴⁵⁸ There five points in different distances from Mecca that those who want to do hajj can start "ihram" from there.

society, and it is to be spent for the public's benefit.⁴⁵⁹ In the Shia view, however, spoils of war are just only one of the things from which *khums* must be paid. In addition, profits of mining, the finding of buried treasure and of diving in the sea, wealth that is mixed with illegitimate wealth when unable to discern the amount and/or the owner, and that which exceeds one's yearly expenses from one's yearly earnings, must all be divided into five and one of those fifths be given as *khums*. Today *Khums* in Shia Islam is the great budget that can secure the important part of the budget of the state. When the government is not Islamic, Shia Muslims should give a big portion of *khums*, which is called the "share of the Hidden Imam" or *sahm-e imam*, to the Grand Ayatollahs or the representatives they introduce, as representatives of the Hidden Imam.⁴⁶⁰ The collected money will be spent on behalf of the payers of the tax. *Khums* has been the most significant factor in helping Shia *Ulama* to keep their independence from governments.

7- The Book of compulsory charity (kitab al- Zakat کتاب الزکاه)

Zakat in Shia Islam is more limited compared to Sunni jurisprudence.⁴⁶¹ This is because *zakat* in Sunni jurisprudence covers most cases of *khums* as well. In fact it could be said that *khums* and *zakat* are combined in Sunni Islam while separated in Shia. In Shia jurisprudence *zakat* is another way of paying from wealth derived from nine things: gold, silver, wheat, barley, dates,

⁴⁵⁹ Motahari, *Ashenaei ba ulum-e islami: fiqh* (Introduction to Islamic sciences: jurisprudence), sadra publications, No year, p. 93.

⁴⁶⁰ Ayatollah Mohammad Taqi Bahjat, Verdict on *khums*, accessible via: <http://www.bahjat.org/index.php/ahkam/estefahat/111-2011-09-06-09-21-52.html>

خمس را باید دو قسمت کنند. يك قسمت آن سهم سادات است که بنا بر احتیاط واجب باید با اذن مجتهد جامع الشرائط به سید فقیر یا سید یتیم، یا به سیدی که در راه درمانده شده بدهند و نصف دیگر آن سهم امام است که در این زمان باید به مجتهد جامع الشرائط بدهند و در صورت عدم مطالبه مجتهد، به مصرفی که او اجازه می دهد برسانند.

⁴⁶¹ Sajjad Choubineh, "Ahl-e sunnat va masaleh zakat (Sunnis and the question of zakat." Journal of Farhang-e jihad, No. 38, 1383/2004, p. 226.

grapes, and animals of the cow family, animals of the sheep family, and animals of the camel family. In jurisprudence the conditions for *zakat* are due from these nine things; the amount of *zakat* due; and the ways it is to be spent are discussed. In the Qur'an, *zakat* is mostly mentioned along with prayer, but only that it is to be given and the ways it is to be spent has been explained – the rest is known from the *Sunna*.⁴⁶² *Zakat* was one of the very first sources of disagreement within the young Islamic society after the Prophet passed away. Abu Bakr, the first caliph, cracked down those who refused paying *zakat* as they had rejected Islam or became apostates. These early internal wars of Muslims are named 'the battles of apostasy' because the first Caliph called those insurgents as 'apostates'.

There is a need for an explanation regarding the nature of *zakat* as the 'poor tax' and its difference with general optional charitable acts as cases of right-doing. Optional charitable acts are called *sadaqat* (sing. *Sadaqa*). Unlike charitable acts *zakat* is compulsory and is regarded as a purification for what one gains when enjoying the general facilities and infrastructures of society. It is while general charitable acts are optional, although highly recommended. This is why *zakat* is less of a voluntary and more of a required religious observance.⁴⁶³

According to the Quran the main utilizations of *zakat* are as follows which one of them is related to jihad:

- First and foremost the poor and needy

⁴⁶² Motahari, *op cit.*, p. 38.

⁴⁶³ Farah, *Islam*, p. 142.

- Slaves, to purchase their freedom
- Officials who gathered the zakat
- Those non-Muslims whose hearts are to be reconciled as *ta`lif al-qulub*.⁴⁶⁴
- Paying back debts incurred as a consequence of acts of benevolence
- Arming the Muslim army
- Supporting institutions dedicated to the service of God
- Aiding poor travellers including those searching for knowledge⁴⁶⁵

8- The Book of Taking Seclusion (*Kitab al-i'tikaf* كتاب الاعتكاف)

I`tikaf which literally means ‘to reside in a specified place’ is a type of ‘worship-act’ whereby a person resides in a mosque for at least three days during 13th to 15th of month of *Rajab*. The performer of *i`tikaf* is supposed not to exit the mosque and is meant to be fasting all three days. *I`tikaf* is desirable, not obligatory, but if it is begun and kept up for two days, the third day becomes obligatory.⁴⁶⁶

⁴⁶⁴ *Ta`lif qulub* has a lot of potential to work on. Actually when *ta`lif qulub* is mentioned clearly in the Quran jihad has never been mentioned as warfare in the Quran. It is while jihad is now treated as a fixed principle while *ta`lif qulub* is ignored. I believe *ta`lif qulub* has the potential to become a basis for reshaping Muslims way of treating non-Muslims and as such should not be limited only to giving them gifts but to treat them in a way that become friendly with Muslims.

⁴⁶⁵ Farah, *Islam*, p. 143.

⁴⁶⁶ Motahari, *op cit.*, p. 39.

9- The Book of commanding to good and Prohibiting from evil (kitab al-amr bil-m 'aruf wa nahy anil-munkar كتاب الامر بالمعروف و نهى عن المنكر)

There is a verse in the Quran which encourages the believers to appoint a qualified group from among themselves to promote the good and admonish evil:

And let there be among you a community calling to virtue, and advocating righteousness, and admonish about evil. These are the successful. (3:104)⁴⁶⁷

This verse has been used to derive a ruling which orders all Muslims to be guardians of virtue and goodness, and to deter evil and wrong-doings. The guarding of virtue and good is named *amr bil-m'aruf* and the deterrance of evil and wrongs is called *nahy anil-munkar*. The requirements and conditions of those who are qualified for *amr bil-maruf* and *nahy anil-munkar* are stated in jurisprudence in detail. We will discuss this principle later on, when examining the position of jihad according to Shia jurisprudence regarding suicide terrorism.

Before discussing the Book of Jihad, which is the centre of our focus in this research, it is necessary to mention that when we talk about jurisprudential jihad, or jihad in the jurisprudence, it means jihad as an act of worship – like the above mentioned nine worship acts – which is compulsory for all those Muslims who qualify for it. Seeing jihad as an act of worship limits, if not completely removes, any flexibility for challenging it if one belongs to the

⁴⁶⁷ Transliteration: Waltakun minkum ommatun yada`wna ila alkhayri wayamuroona bialma`roofi wayanhawna a`ni almunkari waolaika humu almuflihoon.

وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ (آل عمران: ١٠٤)

jurisprudential camp and believes in all-encompassing jurisprudence. Still there are some ways, or better to say techniques, which can be applied to manage jurisprudential jihad by questioning or modifying its nature rather than questioning itself as was discussed before.

10- The Book of Jihad (كتاب الجهاد *Kitab al-jihad*)

The book of jihad deals with issues concerning Islamic warfare. Jihad has two meanings in Shia jurisprudence. The first is the particular meaning of jihad, or *jihad bi ma`na al-akhas* (جهاد بمعنى الاخص), and it means attacking non-Muslims preemptively to force them to convert if they are polytheists, or ensuring submission to the Islamic rules if they are people of the Book (monotheists).⁴⁶⁸ Jihad in its preemptive meaning must be led by the immaculate Imam or his representative exclusively appointed for war. Jihad in its second meaning or *jihad bi ma`na al-a`am* ((جهاد بمعنى الاعم)) is much broader. It not only covers all forms of armed conflict but also theoretically rules foreign policy and international relations of the Islamic state as well.

The word 'jihad' in Shia jurisprudence when used without any prefix or suffix, for example *jihad al-difa`* or *jihad al-boghat*, means the first one or *jihad bi ma`ana al-akhas*. The definition of jihad provided by Shahid Thani,

⁴⁶⁸ Al Hassan ibn Yuosof famous as Allamah al-Hilli, *Tabsirah al-mutia`limin*, No publication, No year, pp. 80-81.

فى من يجاهد من الكفار

كل من خالف الاسلام و انكر الشهادتين و جب جهاده و قتاله و هم ينقسمون قسمين:

احدهما لا يرجع عنهم الا ان يسلما او يقبلوا الجزية و يلتزموا شرايط الذمه، و هم اليهود و النصرى و المجوس.

و من عدا الثلاث فرق يجب قتالهم الى ان يسلما او يقتلوا.

ابى جعفر محمد ابن الحسن الطوسى، الاقتصاد: الهادى الى ارشاد، سلسله الينايع الفقيهيه، مؤسسه الفقه الشيعه، بيروت - لبنان، 1993، صص 3-4.

whose book is taught in today's Shia seminaries as a staple text book, is clear in this regard:

Jihad has different forms:

- *Fighting non-believers preemptively to invite them to Islam.*
- *Fighting against an attack by non-believers to the Muslims in which case the attack is so severe that it leads to the domination of non-Muslims over Muslims, or taking their properties and so on, even if the damage be limited.*
- *Fighting one who is going to kill an innocent person, or takes his belongings, or assaulting others sexually. In all cases there is no difference whether the victim is Muslim or non-Muslim. In this category fits the case when a captured Muslim fights to save his life. From above mentioned other than section one others better be called difa`, or defence, rather than jihad.*
- *Fighting those who rebel against the just ruler.*

What we mean here by jihad is the first section only. We will also discuss the second section briefly and not as the main subject but as a secondary issue. Section four will be discussed at the end of this book and section three will be discussed in the Book of punishments, or kitab al-hudoud.⁴⁶⁹

و هو (الجهاد) اقسام: 1- جهاد المشركين ابتداء لدعائهم الى الاسلام. 2- و جهاد من يدهم على المسلمين من الكفار بحيث يخافون استيلائهم على بلادهم او اخذ مالهم و ما اشبهه و ان قل. 3- و جهاد من يريد قتل نفس محترمه، او اخذ مال، او سبي حريم مطلقا و منه جهاد الاسير بين المشركين للمسلمين دافعا عن نفسه. و ربما اطلق على هذا القسم (غير الاول) الدفاع لا الجهاد، و هو اولى. 4- و جهاد البيغاه على الامام. والبحث هنا عن الاول و استطراد ذكر الثانى من غير استيفاء و ذكر الرابع فى آخر الكتاب، والثالث فى كتاب الحدود.

Although jihad concerns armed conflict, if we consider the contents of the Book of Jihad as its subject matter, then its scope becomes much broader. Jurists also include in the Book of Jihad discussions of peace treaties with non-Muslim states and also the conditions for allowing non-Muslims to live inside an Islamic polity as citizens of that state, or *ahl al-dhimah* (اهل الذمه).⁴⁷⁰ According to this broad approach, in addition to religiously legal armed actions, jihad covers the main three responsibilities of the Islamic state. These are Internal Security Policy, Defence Policy, and Foreign Policy. Despite different approaches of famous Shia jurists – including Shaikh Tusi, Muhaqiq Hilli, Allama Hilli, Shahid Awwal and Shaid Thani, in including various subjects in their Books of Jihad – what is discussed commonly under the particular meaning of jihad in Shia jurisprudence is usually preemptive jihad. Other subjects are discussed under fighting rebels, *difa`* or *hudoud*. Thus jihad in Shia jurisprudence primarily means waging war against non-Muslims who have no peace agreement with Muslims, and the fighting is for the sake of converting them to Islam or forcing them to submit to Islamic rules and law. This is what we call it ‘jurisprudential jihad’ or ‘preemptive/offensive jihad’ in this research.

Jihad in this meaning is a *fard kifayah*, or collective obligation, for all mature, sane, free, males who are not too old and are able to move properly, able to see properly, are healthy, and financially independent, acting upon the order of a just ruler or his representative.⁴⁷¹ Jihad in its jurisprudential meaning must be waged at least once

زين الدين الجبعي العاملي (الشهيد الثاني)، الروضة البهية في شرح اللمعة دمشقية، جامعه النجف الدينيه، 1967 (1387)، صص 379-380.

Shahid Thani, *Al-Rawda*, pp. 379-380.

⁴⁷⁰ Ibid, pp. 379-420.

⁴⁷¹ Al-Shahid al-Thani, *al-Rawdah al-Bahyyah*, p. 79.

فيمن يجب عليه:

annually⁴⁷² against non-believers who are not Jews, Christians or Zoroastrians until they accept Islam as their religion. Jihad against believers in God, whether they are people of the Book like Jews and Christians, or those who believe in God like Zoroastrians, but who do not accept to pay the poll tax, or *jizyah* (جزية), is compulsory as well.⁴⁷³

As was noted above in this discussion of Shia jurisprudence, the main understanding of the term jihad is preemptive attack on non-believers. Other versions of warfare such as self-defense, defense, and fighting against rebellions are essentially secondary uses of this term and are included only because they are discussed within the Book of Jihad.⁴⁷⁴ Jihad in its basic meaning as a preemptive attack in Shia jurisprudence is a compulsory duty just like other duties of worship or liturgical acts such as prayer, almsgiving, and fasting. However, I argue that such an understanding of jihad, although it has served the worldly power of Muslims during the history of Islam, is arguably nevertheless against the basic teachings of Islam. This claim will be elaborated in the following chapter.

و هو فرض على الكفايه بشروط تسعه: البلوغ، و العقل، و الحريه، و الذكوره، و ان لا يكون هما، و لا مقعدا، و لا اعمى، و لا مريضا يعجز عنه، و دعاء الامام او من نصبه عليه.

الحسن بن يوسف بن على بن المطهر المشهور بالعلامه الحلّي، تبصره المتعلمين، ص. 79.

و اقله مره في كل عام⁴⁷²

الشهيد الثاني، الروضه البهيه، ص 380

⁴⁷³ Allahah Hilli, *Tabssirah al-mutia`limin*, p. 80.

في من يجب جهادهم:

الاول: اليهود و النصارى و المجوس، و هولاء يقتلون الى ان يسلموا او يلتزموا شرايط الزمه.

الثاني: من عدا هولاء من الكفار يجب جهاده و لا يقبل منه الا الاسلام.

جمال الدين ابي منصور الحسن بن يوسف بن على بن المطهر المشهور بعلامه الحلّي، تبصره المتعلمين، ص 80.

⁴⁷⁴ Salehi Najafabadi, *Jihad*, p. 39.

Chapter Nine

Jihad in Shia jurisprudence: a critical analysis

Introduction

Jihad is one of the least understood concepts not only among non-Muslims but among Muslims themselves as well. The spectrum in which jihad is understood is so wide that while for some it is a medium of peace for others it is nothing but offensive warfare. In this chapter I will analyse the concept of jihad in Shia jurisprudence (as we call it Jurisprudential jihad) and will assess its compatibility with Islamic teachings and Shia theological foundations.

Jihad: a general terminology

The Arabic word Jihad is a classical term which has its root in ج-ه-د [j-h-d] meaning 'to strive' or 'hard effort'. Contrary to popular perceptions, the word jihad in the Quran is not necessarily employed as a holy or even a positive term, certainly not all the time. For example in the Quranic verse 29 of chapter eight, jihad has quite a negative meaning. In this case the Quran uses the term 'jihad' pointing to the hard effort of those parents who want to impose disbelief on their Muslim children, which is a great sin:

And We have enjoined upon man goodness to parents. But if they endeavour (strive) to make you associate with Me (God) that of which you have no knowledge, do not obey them. To Me is your return, and I will inform you about what you used to do. (Q.29:8)⁴⁷⁵

⁴⁷⁵ وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ حُسْنًا وَإِنْ جَاهَدَاكَ لِتُشْرِكَ بِي مَا لَيْسَ لَكَ بِهِ عِلْمٌ فَلَا تُطِعْهُمَا ۖ إِلَيَّ مَرْجِعُكُمْ فَأُنَبِّئُكُمْ بِمَا كُنْتُمْ تَعْمَلُونَ (العنكبوت ٨)

Jihad in the Quran is not a militant expression either.⁴⁷⁶ There is no place in the Quran where ‘jihad’ undoubtedly means ‘war’. To know the exact meaning of jihad in the Quran, and according to Izutsu’s vast researches, the best way is to take a semantic approach and read Quranic terms in line with their neighbouring words belonging to the same meaning field.⁴⁷⁷ In none of 41 cases where the word jihad occurs in 36 verses of the Quran is this term – at least directly and definitely - associated with ‘warfare’. While the term ‘qital’ in the Quran is clearly about warfare. This is why for many scholars the Quranic terms for war are *qital* and *harb* and not jihad.⁴⁷⁸ Jihad, in the Quran, is reserved for the overall religious struggle – mostly in the form of personal purification but even in the social form it is not violent but a collective effort to establish a just social order. In the Quran, as mentioned above, military activity is consistently identified by other terms, such as *qital* and *harb* which both mean “fighting”.⁴⁷⁹

Outside the Quranic context, generally speaking, jihad as an Islamic concept includes any effort in the way of God, or *jihad fi-sabil Allah* (جهاد فى سبيل الله). Jihad in this meaning is a religious phenomenon and may have three main forms drawn from different perspectives:

- 1- Jihad as warfare (for ideology, theology or pure conquest)
- 2- Jihad as the spiritual journey of a believer

⁴⁷⁶ Farah, *Islam*, p. 158.

⁴⁷⁷ Toshihiko Izutsu, *Ethico-religious Concepts in the Quran*, McGill-Queen’s University Press, 2002, pp. 26.

⁴⁷⁸ Mirbagheri, *War and Peace in Islam*, p. 117.

⁴⁷⁹ Brek Batley, *The Justifications for Jihad, War and Revolution in Islam*, Australian Strategic and Defence Studies Centre, Working Paper No. 375, June 2003, p. 4.

- 3- Jihad as striving in the way of God by all means which can include just war as well.⁴⁸⁰

The first concept indicates that jihad primarily means warfare. Among Western scholars, for example, the Middle East historian Bernard Lewis argues that for most of the recorded history of Islam, from the lifetime of the Prophet Muhammad onward, the word jihad was used in a primarily military sense and therefore the usage of the term without further explanation refers to military combat.⁴⁸¹ Within Islamic jurisprudence jihad merely means ‘warfare’ -as was discussed before. Advocates of the second meaning of jihad, which consider it as referring to the spiritual journey of believers, deny any relationship between jihad and violence.⁴⁸² This latter approach toward jihad indicates that many of the Quranic verses and Prophetic traditions confirm such non-violent understanding of jihad. Sufi Muslims, who mostly refuse any kind of violence even in its defensive form⁴⁸³, can be considered as the typical representatives of the second understanding of jihad. For example the great mystic Ghazali, in his plenary work ‘Kimiaye saadat’ (which is written for general and not for expert readers, as he himself indicates), discusses all aspects of religion but does not have any heading on the question of fighting at all.⁴⁸⁴ Even though such omission of mentioning

⁴⁸⁰ Armstrong, *Muhammad*, p. 168.

⁴⁸¹ Bernard Lewis, *The Political Language of Islam*, University of Chicago Press, 1988, p. 72.

⁴⁸² Mirbagheri, *War and Peace in Islam*, p. 125.

⁴⁸³ Ibid.

⁴⁸⁴ Ibid, p. 122.

militaristic jihad could not be interpreted as its rejection by Ghazali, it is nonetheless a clear sign of its insignificance in Ghazali's view.

The third understanding of jihad is a middle way between the first two. The inclusivity of the third understanding of jihad has made it quite popular and consequently this understanding is repeated by both Muslim and non-Muslim scholars when discussing jihad. Karen Armstrong's description of jihad is a good example:

Jihad is not one of the five pillars of Islam. It is not the central prop of the religion, despite the common Western view. But it was and it remains a duty for Muslims to commit themselves to a struggle on all fronts- moral, spiritual, and political – to create a just and decent society, where the poor and the vulnerable are not exploited, in the way that God had intended man to live. Fighting and warfare might sometimes be necessary, but it was only a minor part of the whole jihad or struggle.⁴⁸⁵

I suggest a fourth way for understanding jihad, namely differentiating between jihad in a jurisprudential context and jihad outside the jurisprudential context. Jihad within jurisprudence, which can be called the 'jurisprudential jihad' clearly means not only militant combat but also the offensive version of it both in Shia and Sunni jurisprudence. I believe bargaining with jurists to modify their understanding of jihad is of a very limited use because such a modification will not only be quite limited, but, more importantly, will be temporary. Unlike jihad in jurisprudence, jihad outside jurisprudence is probably not related to violence if we put the Quran as the criterion. Although mainstream Muslims might, and actually should, support legitimate defence,

⁴⁸⁵ Armstrong, *Muhammad*, p. 168.

it is not necessary to undertake legitimate defence in the name of jihad. This is what we explained in the section related to the position of ‘Theo-ethical Islam’ towards jihad. The theo-ethicalist approach towards violence can be a clear instance for such a supra-religious attitude toward the just and moral use of force. I will not get into details here again. In contrast to the jurisprudential understanding of jihad, in none of 41 occurrences of the word in the Quran⁴⁸⁶ does jihad undoubtedly mean fighting. Even in verses 41, 44, 81, 86 and 88 of the Chapter 9 there is need for interpreting ‘falling behind’ as ‘withdrawal from war’. In the Quran, as mentioned previously, the word *qital* (قتال) and *harb* (حرب) are the synonym of fighting and not the word ‘jihad’.

Not only does the word ‘jihad’ not mean violence in the Quran but, with two exceptions, it is not even associated with other words meaning violence. In the Quran verses 9:73 and 66:9 we find the only instances where ‘jihad’ is accompanied by a word which might be interpreted as indicating violence. The word ‘rough’ and the expression of ‘be rough on them’ (وغلظ عليهم) in these two verses are the only occasions that the term ‘jihad’ is accompanied with such words. In other Quranic verses where the term jihad is mentioned the surrounding words lack such characteristics. However roughness, as articulated within these two verses, cannot be interpreted as warfare. This is because in both cases they talk about ‘hypocrites’ and according to Islamic teachings, including Islamic jurisprudence, fighting hypocrites is not allowed. This is the case in both Sunni and Shia jurisprudence. So, however the

⁴⁸⁶ 2:218, 3:142, 4:95, 5:35, 5:53, 5:54, 6:109, 8:72, 74, 75, 9:16, 19, 20, 24, 44, 73, 79, 81, 86, 88, 16:38, 110, 22:78, 24:53, 25:52, 29: 6, 8, 29:69, 31:15, 35:42, 47:31, 49:15, 60:1, 66:9. [10 of them are Meccan verses which revealed before the permission for armed defence then cannot mean warfare and four of these 10 are used in general form the same used by pro-preemptive jihad as military activity]

‘roughness’ might be interpreted, it cannot include warfare. Good evidence that roughness by itself does not mean fighting is found in verse 3:159 which says if the Prophet was rough to his followers they would leave him. It is obvious that the notion of the Prophet physically or militarily fighting his own followers does not make sense, so then ‘roughness’ as such cannot imply fighting.⁴⁸⁷

Unlike ‘jihad’ the term ‘qital’, derived from the root [q.t.l] ق.ت.ل meaning murder, not only literally means fighting but the surrounding words in the verses are also about physical fighting as well. Thus interpreting ‘jihad’ as warfare needs a significant critique as to its literal meaning. It requires one to ignore the surrounding words in those verses where the word ‘jihad’ is used. While ‘qital’ has been repeated 170 times in the Quran and is the most frequent term meaning ‘fighting’, still there is another term in the Qur’an which bears a similar meaning. ‘*Harb*’, or war, which has been used seven times in the Qur’an, means fighting as well. So although word ‘fighting’ is present in the Quran, the use of jihad as warfare is actually absent from it. As Aslan remarks: “There are a handful of words in Arabic which can be definitively translated as ‘war’; jihad is not one of them”.⁴⁸⁸

The question is then why, in spite of existence of other terms and more specifically the frequently repeated term of ‘qital’, it was that ‘jihad’ was used

⁴⁸⁷ So by mercy from Allah, [O Muhammad], you were lenient with them [the believers]. And if you had been rude [in speech] and harsh in heart, they would have disbanded from about you. So pardon them and ask forgiveness for them and consult them in the matter. And when you have decided, then rely upon Allah. Indeed, Allah loves those who rely [upon Him]. (3:159)

فَبِمَا رَحْمَةٍ مِّنَ اللَّهِ لِنْتَ لَهُمْ وَلَوْ كُنْتَ فَظًّا غَلِيظَ الْقَلْبِ لَانفَضُّوا مِنْ حَوْلِكَ فَاعْفُ عَنْهُمْ وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ إِنَّ اللَّهَ يُحِبُّ الْمُتَوَكِّلِينَ (آل عمران ١٥٩)

⁴⁸⁸ Reza Aslan, *No god But God*, p. 80.

for warfare after the Prophet. The answer to this question becomes clearer if we pay attention to the conditions/restrictions imposed by the Quran on ‘qital’, or ‘fighting’. In the Quran Qital is quite bound by strict conditions in a way that it is not easy to apply outside of its Quranic context:

*Fight in the way of Allah those who fight you but do not start fighting. Indeed. Allah does not like transgressors. (Q.2:190)*⁴⁸⁹

Due to rigid restrictions imposed by the Quran on ‘qital’ those ambitious scholars, strategists, and statesmen who were supportive of an aggressive foreign policy by the early Islamic states found such restrictions regarding ‘qital’ cumbersome and searched for a replacement which gave them an open hand.⁴⁹⁰ They found the term ‘jihad’ capable of freeing the accumulated energies of Muslims. The only thing which was needed to adapt ‘jihad’ with the requirements of that ‘aggressive foreign policy’ was some degree of modification of this term in a way that brought it out of context.⁴⁹¹ As is usually expected in similar situations, many of scholars who pursued glory and the flourishing of their own society and faith welcomed the responsibility to help with the modification of the term to match it with the evolving political requirements.⁴⁹² This is why some scholars such as Joseph Schacht consider that Islamic law follows politics when it comes to issue of

وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا ۚ إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ (البقره ١٩٠) ⁴⁸⁹

⁴⁹⁰ Salehi Najafabadi, *Jahad dar islam*, Nashr Nei, 1386/2007, pp. 41-42.

⁴⁹¹ James T. Johnson, & John Kelsay, *Cross, Crescent, and Sword: The Justification and Limitation of War in Western and Islamic Tradition*, Greenwood Press, 1990, p.37.

⁴⁹² W. Montgomery Watt, *Islamic Political Thought*, quoted in S.M. Farid Mirbagheri, *War and Peace in Islam*, Palgrave Macmillan, 2012, p. 118.

war rather than the other way around: “The (Islamic) law of war was deduced from a one-sided picture of the wars of conquest.”⁴⁹³

Jihad is one of few fields where not only there was a full agreement between the ruling elite and the pious scholars, but as Schacht argues, the scholars followed the ruling elite. As such Islam was used to justify propagation and empire-building through unconditional warfare. Clear prohibition against aggression and forceful conversion, however, were sometimes neglected or ‘divinely’ overridden by Quranic verses judged more supportive of the political or material interests of the governing group or ruler.⁴⁹⁴ The early jurists’ formulations of rules of jihad and proactive interpretation of jihad reflected the interests of the established Muslim authority which sought the expansion of the Islamic empire, rather than the creation of a just social order as insisted upon in the Quran.⁴⁹⁵

Clear evidence that jihad in its military form was not a religious concept is seen in the Masoudi’s understanding of jihad as a progressive secular policy. Masoudi (d. 956), the great historian of the third century of Islam, in his book of ‘Murouj al-Dhahab’, reports how the Chinese government of the time was not waging jihad (by which he means a progressive military campaign of course and not a religious duty of Islam) and that led to weakness and collapse of China’s power.⁴⁹⁶ China was a non-Muslim state and had minimal relations with the Islamic polity of the period. Thus the term ‘jihad’ used by Masoudi

⁴⁹³ Schacht, *Islamic law*, p. 76.

⁴⁹⁴ Brek Batley, “The Justifications for Jihad, War and Revolution in Islam.” Australian Strategic and Defence Studies Centre, *Working Paper No. 375*, June 2003, p. 12.

⁴⁹⁵ Ibid.

⁴⁹⁶ Ali ibn Hussin ibn Ali al-Masoudi, *Murouj al-Dhahab*, Vol. 1, p. 135.

was equal to an ‘aggressive foreign and military policy’ rather than as a strictly spiritual concept. This illustrates how quickly even scholarly Muslims of the time regarded jihad as a tool for such an ‘aggressive policy’. The concept of jihad in its jurisprudential meaning and as unconditional warfare gradually became one of dominant meanings of this term by the third century of Islam⁴⁹⁷ and as such fiqh was following the realpolitik of the era in this regard rather than shaping it. According to the prominent Egypt scholar Ali Abdel Raziq (d. 1966), the rule of those who came after the death of the Prophet, including the first generation of Muslims, rather than being an Islamic state it was in fact an imperial Arab entity.⁴⁹⁸ As such introducing jihad as offensive warfare was due to the requirements of the imperial policies of Muslims rather than a religious doctrine. When jihad finished its job in serving the Muslims’ imperial expansionism it was marginalized: “Once the Muslim expansion ended quietism set in; there seemed no need for jihad [anymore].”⁴⁹⁹

Jihad as an imperial policy, as will be discussed in the next section, was quite instrumental in serving the expansive political and territorial interests of the post-Muhammadan Muslim polity.

⁴⁹⁷ Ahamad Kazemi Mousavi, “Rethinking concept of jihad.” Accessible via: <http://www.rahesabz.net/story/81151/>

⁴⁹⁸ Ali Abdul Raziq, “Al-Islam Wa Usul Al-Hukm”, in *Al-Islam Wa Usul Al-Hukm: Darasa wa Wathaiq*, ed. Muhammad Amara, Al-Muasasa al-Arabiyya lil-Darasat wa al-Nashr, 1972, pp, 174-175.

⁴⁹⁹ Veronica Ward, “Martyrdom in the Three Monotheic Religions.” In *Religion and Terrorism*, Ed Veronica Ward and Richard Sherlock, p. 62.

Services of jihad for Muslims

As we witnessed above jihad was used by Muslims to serve their temporal interests and in this was extraordinarily successful. As will be discussed shortly, the aggressive foreign policy undertaken by the successors of the Prophet of Islam under the name of jihad was not only useful but also essential for the survival of the nascent Islamic society of the time. Was this aggressive military and foreign policy understood as an offensive or *jihad ibtida`n* from the very beginning (as was promoted by the Islamic jurisprudence after its formation later on in mid second Islamic century)? Or was it a mere requirement of the time as some scholars such as Reza Aslan argue⁵⁰⁰ and developed a religious characteristic later? In either case the aggressive policy of conquering new lands in the name of jihad had a significant effect on what we know as Islam today. It is well-known that the Islamic state after the death of the Prophet of Islam faced a vital crisis of legitimacy.⁵⁰¹ In absence of the Prophet Arab tribes (except one) refused to obey the new Caliph and the first thing affected by this disobedience was the flow of taxes and manpower – two main pillars of any given state. The aggressive policy, later famous as offensive jihad, was introduced to address this situation. The new Caliph announced those who refused to pay taxes and join the army to defend the polity were henceforth ‘apostates’ and legitimate targets of religiously approved warfare, later, jihad. Despite the fact that the Quran had prohibited believers from questioning the faith of those who claim

⁵⁰⁰ Aslan, *No god but God*, p. 80.

⁵⁰¹ As we know “Battles of Apostates” were about to remove the new Muslim state but Muslims were lucky that their army returned from its uncompleted mission and saved the capital Median.

it⁵⁰² and as such implying disobedient Muslims to be apostates, which seemed against the very basic teachings of Islam, this policy worked quite well. Therefore it could be said that early Islamic society, which was threatened by a serious lack of material and social resources, owed its survival a debt to this rethinking of jihad⁵⁰³ -although at this stage not in its established name as a jurisprudential term yet.

It is well documented that, after the Prophet, all Arab tribes outside Medina, except the Banu Saqif and inhabitants of Mecca, refused the authority of the first Caliph.⁵⁰⁴ The tribes of Arabia not only rejected the new ruler, refused to pay taxes and stopped sending their troops for military missions, but they also started fighting the Muslim state over different issues including political power and succession of the Prophet. This threatened to paralyze the newly established polity completely. The opposition was so intensive that advocates of the Muslim state were by comparison just a small minority within Arabia.⁵⁰⁵ Pro-government people were feeling so unsafe that the first Caliph, Abu Bakr, ordered them to stay armed all the time so as to be able to defend themselves in the case of a sudden ambush.⁵⁰⁶ To meet the crucial challenges fiqh (of course in its primitive form) was used as a tool and not as a guide at this stage. Firstly it was utilised in establishing the institution of caliphate which had no clear basis in the Quran or Prophetic tradition.⁵⁰⁷ Secondly it

⁵⁰² Verse 4:94 prohibits even the Prophet himself to do so.

⁵⁰³ Mirbagheri, *War and Peace in Islam*, p. 123.

⁵⁰⁴ Muhammad bin Jarir Tabari, *Tarikh Tabari*, Vol. 3, p. 363. Accessible via: <http://tarikheslam.com/downloadbook/file/362-d-tarikhnameh-tabari-j3.html>

⁵⁰⁵ Masoudi, *Murouj al-dhahab*, Vol. 1, p. 657.

⁵⁰⁶ Tabari, *Tarikh*, Vol. 3, p. 360.

⁵⁰⁷ Ayoub, *Islam: Faith and History*, p. 74.

was employed to crack down on the nominally rebelling tribes by calling them ‘apostates’ and expose them to harsh punishments. Such unusual use of fiqh was contrary to teachings of Islam and faced objections from close companions of the Prophet including the second and the fourth Caliphs of Islam.⁵⁰⁸

Fiqh was also used to justify an aggressive foreign policy, later known as the doctrine of jihad, to attract resources outwards by conquering new lands in an effort to address the ongoing problem of internal economic disparity more sustainably by distributing wealth instead of asking for taxes.⁵⁰⁹ This attitude toward the new aggressive foreign policy, namely jihad, can be seen in the argument of Amr ibn al-As, the Muslim commander. Ibn al-As does not point to jihad as a religious duty when he suggested the conquest of Egypt to the second Caliph Umar. He simply provided quite a secular argument that Egypt would be a good source of manpower and wealth for the Muslim state and that it was an easy target.⁵¹⁰ The aggressive foreign policy based on what later on became famous as ‘jurisprudential jihad’ helped with the rapid expansion of Muslim power. The power of the nascent Islamic caliphate grew well beyond the Arabian Peninsula in the form of a Muslim Empire with an area of influence that stretched from the borders of China and the Indian subcontinent, across Central Asia, the Middle East, North Africa, Sicily, and the Iberian Peninsula, to the Pyrenees, within around a century. Its advance

⁵⁰⁸ Tabari, *Tarikh*, Vol. 3, pp. 363, 375.

⁵⁰⁹ Schacht, *Islamic law*, pp. 23-24.

⁵¹⁰ Mohammad Bin Ishaq al-Yaqubi, *Tarikh Yaqubi*, Vol. 2, trans. Mohammad Ibrahim Ayati, 1342SH (solar hijri), Entesharat Elmi wa Farhangi, P. 32.

into Europe was stopped only in 110/732 as result of defeat in the Battle of Tours by Franks.

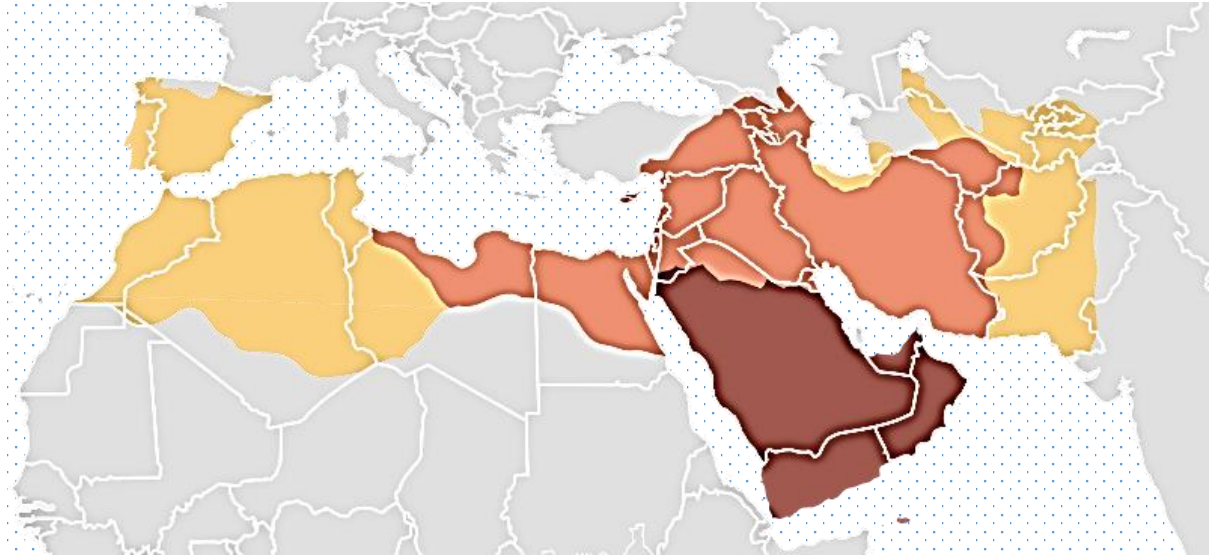


Figure 11 expansion of Islam in around one century after its emergence

Expansion under the Prophet, 622–632 EC/ 1-11 A.H.

Expansion during the Rashidun Caliphate, 632–661 EC/ 11-40 A.H.

Expansion during the Umayyad Caliphate, 661–750 EC/ 40-129 A.H.

The power and success that followed opening new lands and gaining access to unprecedented level of wealth and glory provided Muslims such a self-confidence which helped them open the way for all kind of intellectual activities from art to science and philosophy.⁵¹¹ We pointed to this era of competency which is known as the ‘golden age of Islam’ previously. This service of jihad, in my opinion, is even

⁵¹¹ Abdulkarim Soroush, “hele barkhiz ke andishe digar bayad kard (It is the time for waking up).” accessible via: <http://soroush-andishe.persianblog.ir/>

more important than its material gains for Muslims. Most, if not all, glorious intellectual productions of the Muslims belong to this era.⁵¹²

From what we learnt about challenges facing the Muslim state, it could be said that jihad in this new era (after the Prophet) meant the opposite of sitting idle watching the new Islamic faith and state fading and even disappearing quickly. Perhaps Jihad can be thought of as a movement, like other movements around the world, and at that time everything was evaluated through it including what it meant to be a good Muslim. With the advent of this new form of jihad, Muslims were not thinking about their internal clashes anymore because they were invited to something worldly, much more fruitful, and at the same time religiously rewarded. Any other internal dispute would look ridiculous compared to what Jihad was offering. Ayoub pointing to this fact suggests:

[Jihad] changed the course of world history, spread Islam far beyond its original home, brought rich avenues into Muslim treasury, and turned the energies of the disaffected tribes of Makkah [Mecca] and Madinah [Medina], at least for a while, away from their inter-tribal squabbles.⁵¹³

By virtue of the development of the ‘jihad doctrine’, a society which was quite unstable became one of the dominant powers of the world. Jihad effectively

⁵¹² One may say that, as the progressive policy itself was not directly rooted in the teachings of Islam, the freedom given to minorities and the generous behaviour toward all subjects of Muslims and non-Muslims by the ruling elite neither was not the result of literal following the religious commands rather was result of the self-confidence injected by the consecutive successes owed to this progressive policy executed under the name of “jihad”. As such if we do not count Islam responsible for side effects of the Muslim empire’s progressive policy conducted in the name of jihad, we should not credit it for the tolerant policy of the Muslim empire toward minorities either. This, in my view, is a valid argument because such details were not point of concern for Islam as a religion as they are not primary points of concerns for other religions either. Of course the general moral guidelines promoted by Islam among its believers could have indirect influence on Muslims outward behaviour but not in a form of an exact policy as was followed by the Muslim empire. No doubt any self-interest behaviour does not have its roots in moral guidelines as such the “progressive jihad” even lacked an indirect connection to Islam as religion.

⁵¹³ Ayoub, *Islam: Faith and History*, p. 74.

redirected Muslim attention from internal disputes to expanding their power externally. This untied the believers by changing priorities of the competing groups within the Islamic society from weakening each other to uniting to dominate others. Yet the doctrine of jihad was not fully developed as an ideological expression at this stage. Until Muslim conquerors began absorbing the cultures and practices of the Near East where an aggressive doctrine similar to jihad was a part of the belief system, jihad stayed on margins of religion rather than being its core.⁵¹⁴ Muslim armies just joined the existing fracas between the warring empires of Persians and Romans and learnt from them how to further their strategic plans using religion. The use of religion for furthering the imperialistic ambitions abroad was an important part of the strategy of the main empires of the time. Both the Christian Byzantines and the Zoroastrian Persians used religion as an ideological tool in their struggle for empire.⁵¹⁵ As such Muslims neither created offensive jihad (as an ideological expression) nor defined it, though they quickly dominated it.⁵¹⁶

As we witnessed fiqh, at this stage, was not an antecessor but was used as a tool to serve demands and interests of the Islamic polity rather than showing it the way and serving as a guide. The Muslim scholar Timothy Winter, also known as Abdal Hakim Murad, believes that it was not fiqh which shaped the conduct of the post-Muhammedan Muslim army in the first place but it was the conduct of the Muslim army which shaped the Islamic laws regulating

⁵¹⁴ Aslan, *No god but God*, p. 79.

⁵¹⁵ Armestron, *Muhammad*, p. 56.

⁵¹⁶ Aslan, *op cit*, p. 80.

warfare.⁵¹⁷ For instance issue of ‘murabitah’ or guarding the borders arose only after the Islamic state became a direct neighbor of the Byzantine Empire. There was no such notion during the Prophet’s lifetime. In other words it was the practice of the conquerors that laid the foundations for most of the medieval jihad theory. Quite a lot of the rules of jihad are actually traced back to the Caliph Umar, for instance, rather than back to the Quran and the hadith.⁵¹⁸ Rudolph Peters, who has written a book on jihad in medieval Sharia argues extensively and in detail that the doctrine of jihad became as a part of Islamic teachings in the latter half of the second century of Islam.⁵¹⁹

Fiqh was coordinated with the requirements of Islamic society of the time and because of that its position toward jihad remained quite fluid. At the end of eighth century it was al-Shaybani, Harun al-Rashid’s chief justice of Abbasid Empire, who for the first time wrote ‘Introduction to the Law of Nations’ which provided detailed guidelines for the conduct of jihad against unbelievers, as well as guidelines on the treatment of non-Muslim subjects under Muslim rule.⁵²⁰ Others followed al-Shaybani in expanding the doctrine of jihad based on the actual conduct of Muslim conquerors.⁵²¹ Judge Weeramantry, member of the International Court of Justice, believes that *siyar* of al-Shaybani was the first systematic treatment of international law

⁵¹⁷ Timothy Winter, “Ethics of war”, accessible via:
<https://www.youtube.com/watch?v=T0XIKT5IFIM>

⁵¹⁸ Ibid. <https://www.youtube.com/watch?v=T0XIKT5IFIM>

⁵¹⁹ See: Rudolph Peters, *Jihad in classical and modern Islam*, Markus Wiener Publications, 1996.

⁵²⁰ Christopher G. Weeramantry, *Justice without Frontiers: Furthering Human Rights*, Kluwer Law International, Vol. 1, 1997, pp. 136.

⁵²¹ Schacht, *Islamic law*, p. 76

and not, as it is taught in law schools, work of Grotius *law of war* some 800 years later.⁵²²

Even after the treatise of al-Shaybani, the Islamic military jurisprudence or *siyar* -which dealt with relations with neighboring states including questions of peace and war- did not remain unchanged but kept pace with changing concepts and needs.⁵²³ It was after the closure of the gate of *ijtihad* in 13th century when *jihad*, along with other findings of previous jurists, was labelled as divine and irreversible. The fact that *fiqh* became rigid might be attributed to a decision of the jurists themselves, however it seems it was because *fiqh* lost its importance following the Mongol invasion when it was no longer referred to by the government anymore. Then *fiqh* became fixed and rigid because it was ignored at the political level and this rigidity was simply consequence of its marginalization. This was not a calculated decision by Muslim leadership. After the closure of the gates of *ijtihad* all jurists did henceforth was only repeating characteristics of their ideal version of society as they perceived or understood past events and issues when such jurisprudence was of any use for politics. This nostalgia for a semi-mythical ‘golden past’ and the sacralisation of its characteristics seems to have become an inherent trait of Islamic jurisprudence. It may well remain like that until the next time of prosperity and success is experienced by Muslims and the self-confidence returns. As such, and in support of my argument in Chapter six, it was the mental status of feeling insecure and threatened which led to close-mindedness and rigidity rather than Islamic jurisprudence as such. If

⁵²² Weeramantry, *Justice without Frontiers*, pp. 136.

⁵²³ *Ibid.*

historically self-confidence resulting from consecutive successes brought open-mindedness and tolerance then the Islamic world needs to break the circle of failure and desperation before it becomes open and tolerant as it was in its 'golden age'. Of course if such a situation of self-confidence re-emerges then Islamic jurisprudence will adapt itself as it was the case in its early stages.

To return to our point regarding services of jihad it is worthy to mention that in its military campaigns the Muslim state did not change the dominant strategies of the non-Muslim empires of the time, rather it modified the existing war tactics to avoid clash with Islam's main teachings. Accordingly it could be said that, compared to what was happening in the battlefields of the time, Muslims humanized war.⁵²⁴ For example, they defined illegitimate targets for war in a way that excluded a substantial part of human populations such as women, children, the ill, the clergy, and the elderly from becoming targets in armed conflicts. Giving an immunity to such a big portion of the enemy's population was quite a revolutionary development to the then concept of war. Such immunity was one-sided and the other side would fight Muslims in the same traditional way of killing and destroying indiscriminately.⁵²⁵

Contrary to the perception that the early Muslim conquerors used to force conversion upon the conquered people in fact they did not even encourage it.⁵²⁶ The financial and social advantages of being an Arab Muslim in the

⁵²⁴ Armstrong, *Muhammad*, p. 169.

⁵²⁵ Ibid, p. 87.

⁵²⁶ Ibid.

eighth and ninth centuries were so much that Islam became an elite clique, which a non-Arab could join only through a complex process that involved becoming first the client, or *mawali*, of an Arab.⁵²⁷ A significant development that happened in Islamic jurisprudence at a later time, and after the time of successful conquests was over, was that jurists not only added the concept of ‘forceful conversion’ to jihad but also made a pillar of it. This was because of the self-confidence started to fade away as Muslims felt under pressure after the flow of wealth slowed down because of lack of improvement in the new fronts of Europe, India, and China.⁵²⁸ In previous times the wealth gained after conquering new lands would cover the whole expenses of the campaign and the leftover was enough to fund more new campaigns, making such ventures a wise investment. However after facing failure in several fronts at the same time the circle of success stopped spinning and the whole process changed inalterably.

Muslims in the conquered lands with non-Muslim majority populations, without the traditional self-confidence generated by consecutive successful conquests, felt uncomfortable and under pressure. While Arabia itself did not enjoy any significant strategic importance, many of these newly conquered lands were among top strategic elements of the then civilized world. Muslims, in my opinion, not protected by the grandeur produced by such dazzling conquests, were seen ordinary people now and as such were more feeling like ‘renters’ in the new lands rather than established owners. This lack of self-confidence created a lot of pressure from Muslim public and elite to the

⁵²⁷ Aslan, *No god but God*, p. 80.

⁵²⁸ See: Reza Aslan, *No god but God*, Random House, 2005

political institutions to change the course and force the non-Muslims to convert to Islam. As such the new policy of conversion grew out of weakness and insecurity. The ruling elite, in need of the public support, had no choice but to follow popular demand to show less tolerance toward non-Muslims. It was how another shift in concept of jihad took place when the previously forbidden element of forceful conversion became one of pillars of jihad. Although this new approach toward jihad helped with adding more to number of Muslims and increased their quantity at the same time it weakened quality of the community of Muslims and led to even more defeats which full destruction of their capital 'Baghdad' was its pick. To conclude when successful jihad promoted self-confidence and consequently tolerance among Muslims its decline brought intolerance and rigidness.

Another service of jihad was its influence on strengthening the believers' faith. Masoudi reports a dialogue between the Muslim commander, Mughirah ibn Shu`ba, and one of local governors of Iran when the Muslim army was about to attack that territory. This conversation shows how military successes deepened the faith in heart of the new born society of Muslims:

The local governor said: "you Arabs suffer from starvation. If it is why you are here we are happy to give you food you need and you return." Mughirah replied: "we Arabs were a bunch of despicable and contemptible people. We used to eat dogs and dead bodies. It was until God sent to us a Prophet from ourselves who was, noble and soothfast. The Prophet encouraged us to rise and predicted a glorious future for us that we found it true [as result of conquests]

...⁵²⁹

⁵²⁹ Masoudi, *Murouj al-Dhahab*, Vol. 1, pp. 679-680.

Despite all its positive benefits or consequences for some Muslims, the doctrine of jihad was not without fault. Now we turn to some of the main negative consequences or effects that ‘offensive jihad’ had upon Islam and start from its contradiction with the Prophetic doctrine of a just war.

Jihad as an imperial strategy and not a Prophetic doctrine

The battle over land and trade routes was the basis of the foreign policies of other contemporary religious empires such as Christian Byzantium and Zoroastrian Persia.⁵³⁰ Jihad, as a political and military doctrine, was in line with the similar strategies of other world powers of the time. What early Muslims did was to use their religion as the element of social cohesion to compete with the rival empires in the same way that the rival empires were doing. This new development differed from what Muslims experienced regarding safeguarding their own trade routes and threatening the enemy’s trade routes during the Prophet’s time. Not only the scale but also the philosophy behind these two were not comparable. Raiding Meccan caravans, during the Prophet’s time, not only would provide the *Umma* with desperately needed income in return for their confiscated properties by the Meccans,⁵³¹ it also would disrupt the trade flowing in and out of the hostile Mecca.⁵³² Therefore attacking Meccan caravans was used as a defensive military strategy to weaken the enemy through affecting its main source of income in order to force them accept a peace treaty with the Muslims and to stop them attacking Muslims militarily. Right after the “Hudaybiah Peace Treaty” these

⁵³⁰ Armstrong, *Muhammad*, p. 55.

⁵³¹ Ibid, p. 169.

⁵³² Ibid, p. 170.

kinds of raids were stopped by Muslims. This strategy suited the small army of the Muslim state of Medina, and Muslims had an advantage in using it because, unlike Meccans, they were more reliant on labour-dependant agriculture and less on trade. As such, arguably, there was a significant difference between what happened during the Prophet's era and after the Prophet by Muslim government in the name of jihad. The strategy of the Islamic polity during the lifetime of the Prophet was defensive by nature; while labelling the strategy of Muslims after the Prophet as 'defensive' requires ignoring substantial facts of vast conquests outside Arabia and also the issue of forceful conversion which was recommended by jurisprudence but did not find any chance to be fulfilled due to collapse of an already weakened Islamic empire by the Mongols.

It is interesting to know that, as verse 22:39 indicates, even defence was not approved by the Quran in the first place. The first time Muslims were allowed to defend themselves militarily was 15 years after advent of Islam.⁵³³ It was then when the Quran finally permitted Muslims to do '*qital*' in self defence.⁵³⁴ According to the Quranic teachings on '*qital*' there was a significant difference between the pre-Islamic notion of war and the Islamic one. Armstrong calls it as "evolvment of theology of the just war by the Quran."⁵³⁵ For the first time in Arabia, in which hitherto tribes would not hesitate to wage war if their interests would require so, the two concepts of 'just war' and 'justice in war' were introduced by the Islamic doctrine of war.

⁵³³ Ibid, p. 168.

⁵³⁴ Permission is given to those who are fought against, and God is Able to give them victory. (Q.22:39)

⁵³⁵ Armstrong, *Muhammad*, p. 169.

The Islamic doctrine of ‘justice of war’, or *jus ad bellum*, prohibited all but defensive wars.⁵³⁶ With regard to the ‘justice in war’, or *jus in bello*, in the Islamic doctrine of war there was a clear distinction between civilians and non-civilians of the enemy.⁵³⁷ It was while, according to the pre-Islamic doctrine of war, killing members of the enemy’s tribe was quite common and in some cases civilians were slaughtered in an inhumane way to teach enemies and opponents a lesson that would not be forgotten quickly and to set an example to other tribes.⁵³⁸ The emerging Islamic doctrine of war prohibited the killing of non-combatants, and it also banned any kind of sexual violence, torturing prisoners of war, destruction of properties and religious or medical institutions. These elements several centuries later were incorporated into the modern international laws of war.⁵³⁹ The Islamic doctrine of war during the lifetime of the Prophet was based on the Quranic concept of ‘qital’ and different from later ‘jihad’. Still later jihad applied to tactical levels some rulings of ‘qital’ as legitimate way of fighting but not that much at the strategic level of confining to defensive war. The main effect of ‘Quranic qital’ on the later jihad was humanization of war to some significant extents. Hereunder I will re-count the main inconsistencies between ‘offensive jihad’ of the later time and the early Prophetinc defence policy. There are some points that can help with clarifying the nature of the armed conflicts that early Muslims, during the time of the Prophet, were engaged in and their difference

⁵³⁶ And fight in the cause of God those who fight you, but do not begin hostility; God does not love the aggressors. (Q.2:190)

⁵³⁷ Aslan, *No god but God*, p. 84.

⁵³⁸ Ibn Athir, *Tarikh kamil*, trans. Seyyed Hossein Rouhani, Vol. 2, Asatir Publications, 1370/1991, pp. 582-802.

⁵³⁹ Aslan, *No god but God*, p. 84.

with later ‘offensive jihad’ which later on was theorised by Islamic jurisprudence (now known as jurisprudential jihad) and is the centre of our focus in this research. These points are:

- 1- Except for a few incidents all other cases of the war that Muslims were engaged in happened a few miles around Medina which shows clearly that Muslims were in a defensive position rather than an offensive one. A big part of Arabia was untouched by the Muslim army until warring tribes attacked Muslims in Mecca after the return of the Prophet to this city and the Muslim army chased them in the desert to their strongholds during battles of Hawazen and Thaqif. Basically those battles which the Prophet himself took part or expeditions sent by him were for securing Medina and its routes or fighting back against Meccans and their allies of tribes close by Medina. In those wars that the Prophet himself did not attend some mistakes happened. Fighting in the ‘Forbidden Months’ in some occasions by Muslims, killing some of those who stopped fighting, or those who were in peace with allies of Medina are among them. Then such incidents in these kinds of ‘Saraya’⁵⁴⁰ could not be considered as role models or exemplary for Muslims while they were clearly condemned by the Prophet himself.⁵⁴¹
- 2- The Prophet’s policies were quite different in each war then deriving specific rules from these incidents, which each of them was different from others, is another misjudgement.⁵⁴² What fiqh claims as deriving

⁵⁴⁰ Wars in which the Prophet himself was not attending.

⁵⁴¹ Armstrong, *Muhammad*, pp. 170-171.

⁵⁴² Salehi, *Jihad*, pp. 34-38.

its rulings regarding jihad from the conduct of the Prophet contradicts this simple fact that actually there was no single method for fighting during the time of the Prophet and every situation was treated differently by the Prophet.⁵⁴³ Therefore claiming some fixed jurisprudential rulings in the name of jihad by fiqh contradicts historical realities and jurisprudential jihad cannot be based on the Prophet's conduct.

- 3- Defence was a necessity for the Muslims' Medina state of the prophet's time. The Muslim polity of that time, like any other given state, was supposed to have a defence policy for protecting its people against outside threats. This defence policy was designed for the Medina city-state of the time and was exclusive for those specific conditions.⁵⁴⁴ The Islamic jurisprudence which decontextualized, generalized, and rendered defence policy of Medina as ahistorical applicable universally and eternally for all times and all places⁵⁴⁵ ignores that only members of the city-state of Medina were addressed by the Quranic verses of defence. For example in verse 9:120 only people of Medina are mentioned as responsible for defending the city-state.⁵⁴⁶ In another verse it is clarified that the city-state should not breach conditions of peace treaties with disbelievers and get involved

⁵⁴³ Ibid.

⁵⁴⁴ Mohammad Mojtahed Shabestari, "Tanqih-e mahall-e neza' ba faqihan." Secton2. Accessible via: <http://mohammadmojtahedshabestari.com/articles.php>

⁵⁴⁵ Mirbagheri, *War and Peace in Islam*, p. 120.

⁵⁴⁶ *It was not [proper] for the people of Medina and those surrounding them of the Bedouins that they remain behind after [the departure of] the Messenger of Allah or that they prefer themselves over his self (Q:9:120)*

مَا كَانَ لِأَهْلِ الْمَدِينَةِ وَمَنْ حَوْلَهُمْ مِنَ الْأَعْرَابِ أَنْ يَتَخَلَّفُوا عَنْ رَسُولِ اللَّهِ وَلَا يَرْغَبُوا بِأَنْفُسِهِمْ عَنْ نَفْسِهِ ذَلِكَ بِأَنَّهُمْ لَا يُصِيبُهُمْ ظَمَأٌ وَلَا نَصَبٌ وَلَا مَخْمَصَةٌ فِي سَبِيلِ اللَّهِ وَلَا يَطْنُونَ مَوْطِئًا يَغِيظُ الْكُفَّارَ وَلَا يَنْتَلُونَ مِنْ عَدُوٍّ نَيْلًا إِلَّا كُتِبَ لَهُمْ بِهِ عَمَلٌ صَالِحٌ إِنَّ اللَّهَ لَا يُضَيِّعُ أَجْرَ الْمُحْسِنِينَ (التوبة: ١٢٠)

when other Muslims outside Medina are attacked by non-Muslims even if the attack on Muslims is because of their faith.⁵⁴⁷ My point is that when non-Medinan Muslims of the Prophet's time had no responsibility toward Medina city-state how could universal rulings be sensibly derived from specific conditions of that period and be obligatory for all Muslims of the world for all times.

4- In seventh century Arabia the political system was based on tribal affiliation. A fellow-tribesman would be defended no matter how genuine his case was and outside the tribe all obligations ceased and no agency existed to prevent wrong being done to members of other tribes.⁵⁴⁸ The tribe was the primary source of security and therefore anyone expelled from a tribe was not able to find a replacement source of security.⁵⁴⁹ The life of the Prophet is a good example of how losing the tribe's protection could make a person vulnerable and defenseless.⁵⁵⁰ That was because of the rigidity of the tribal system based on blood kinship. A scarcity of resources and a culture of intolerance resulted from the roughness of the surrounding environment was source of extensive conflicts. This provided the grounds for endless animosity among existing tribes to the extent that

⁵⁴⁷ Indeed, those who have believed and emigrated and fought with their wealth and lives in the cause of Allah and those who gave shelter and aided - they are allies of one another. But those who believed and did not emigrate - for you there is no guardianship of them until they emigrate. And if they seek help of you for the religion, then you must help, except against a people between yourselves and whom is a treaty. And Allah is seeing of what you do. (Q.8:72)

إِنَّ الَّذِينَ آمَنُوا وَهَاجَرُوا وَجَاهَدُوا بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ فِي سَبِيلِ اللَّهِ وَالَّذِينَ آوَا وَنَصَرُوا أُولَئِكَ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ وَالَّذِينَ آمَنُوا وَلَمْ يَهَاجَرُوا مَا لَكُمْ مِنْ وَلَايَتِهِمْ مِنْ شَيْءٍ حَتَّىٰ يُهَاجَرُوا وَإِنْ اسْتَنْصَرُوكُمْ فِي الدِّينِ فَعَلَيْكُمْ النَّصْرُ إِلَّا عَلَىٰ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ وَاللَّهُ بِمَا تَعْمَلُونَ بَصِيرٌ (الأنفال: ٧٢)

⁵⁴⁸ Armstrong, *Muhammad*, p. 58.

⁵⁴⁹ *Ibid*, p. 102.

⁵⁵⁰ *Ibid*, pp. 134, 135.

a state of war was the normal relationship between tribes unless there was a peace treaty. This is what Karen Armstrong describes as the “bloodbath of seventh-century Arabia”.⁵⁵¹ Converts to the new religion of Islam not only had lost their traditional source of security, following their rejection of their tribal idols, but also faced additional threats by questioning the whole belief system of idolatry which was supported by all tribes. This would provide the grounds for rival tribes to cooperate in putting pressure on Muslims. Muslims after the Prophet were not living in a state of war with other countries, as the early Muslims were with rival tribes. Therefore; simulation of later centuries, when Muslims were not living under tribal systems any more, with Arabia of the 7th century and perceiving a continuous ‘state of war’ and basing ‘preemptive jihad’ on it, in my opinion, was a clear deviation from the Prophetic defense policy.

5- If offensive jihad had a place in the Islamic teachings the Prophet himself was supposed to articulate or undertake it first while he did not.⁵⁵² We know that when the Muslim army entered Mecca, the Prophet prohibited any harm to pagans as long as pagans did not start attacking Muslims and again no pagan was forced to convert⁵⁵³ which both are clearly contrary to the jurisprudential jihad. It is interesting to know that pagans fought along with Muslims to protect Mecca against Hawazen and Thaqif tribes.

⁵⁵¹ Ibid, p. 165.

⁵⁵² Salehi, *Jihad*, p. 34.

⁵⁵³ Ibid, p. 60.

From the above five points we can conclude that the defense policy of the Prophet had little in common with the later ‘offensive jihad’. It could be said that a state of war was imposed on Muslims from the very beginning and therefore the Muslims’ defence policy was a reaction to it.⁵⁵⁴ This is why, when the Quran allowed defence, it only addressed the Emigrants ‘*muhajjerun*’ from Mecca and not the native Medina Helpers ‘*ansar*’ because pagan Meccans did not attack the Helpers before.⁵⁵⁵ However when the Meccan army attacked Medina then Medinans were allowed to fight as well. Having this in mind we can gain a better understanding of the justification for permitting Muslims to fight during the Prophet’s lifetime: it was a matter of self-defence.⁵⁵⁶

It is important to bear in mind that when Muslims fled to Medina (Yathrib) this city was suffering a civil strife as result of clashes between two main tribes of Aws and Khazraj along with religious disputes among Jews, idolaters, and the growing community of Muslims.⁵⁵⁷ These troublesome divisions had made agreeing on any kind of united set of rules to solve the disputes effectively unattainable. When the tribes of Medina suggested the rule of the Prophet, as the first non-tribal leader of the city, he accepted it. After the formation of the new state there was a need for a set of laws to replace the tribal laws which, because of their nature, were not in line with the new developments. The immigration of a notable number of (Muslim) Meccans who had no tribal affiliation in the new location and also intense disputes between the main tribes of the city left no place for any kind of tribal system in the new state, Armstrong argues.⁵⁵⁸ This was how the first state system was introduced

⁵⁵⁴ Armstrong, *Muhammah*, p. 169.

⁵⁵⁵ Ibid.

⁵⁵⁶ Ibid, 209.

⁵⁵⁷ Ibid, p. 143.

⁵⁵⁸ Armstrong, *Muhammad*, pp. 143-144.

by Muslims to this part of the world. The Constitution of Medina, or ‘*Sahifah al-Madinah*’, was the manifest of the new state.⁵⁵⁹ ‘Migration’ to Medina and the formation of Medina state was a very important step for Muslims. This incident kept its importance during the history of Islam. In the 16th year of the hijrah Umar bin Khattab, the second Caliph, decided to put a date for governmental written correspondences, especially for his letters to heads of other states. When he decided to indicate the date of the Prophet’s birthday or advent of Islam as the beginning of Islamic calendar, Ali suggested the hijrah and formation of the Muslim state be used for that.⁵⁶⁰ This was how the Islamic calendar based on hijrah and formation of the first Muslim state was introduced.

Whatever happened at the time of the Prophet after formation of the city-state of Medina, including its defence policy, must be understood according to its own context rather than being generalized for all times with substantially different circumstances. In Islamic jurisprudence jihad as ‘warfare’ is seen independently as a religious concept. Thus jurists when referring to the Islamic concept of ‘warfare’ see it as an essential part of the religion. In this way they ignore the concept of ‘statehood’ as the factor which shaped the conduct of Muslims, including the Prophet, regarding war. By neglecting requirements of statecraft, fiqh uploads all historical incidents that happened during the Prophet’s administration in Medina directly on the shoulders of the religion. The key element concerning the Islamic concept of ‘warfare’ is that it was a side effect of the formation of the initial Muslim state which itself was a side effect of the lack of existence of statehood in Arabia.⁵⁶¹ All recorded incidents related to that time-frame need to be understood according to the

⁵⁵⁹ Ibid, p. 154.

⁵⁶⁰ Yaqubi, *Tarikh*, vol. 2, p. 29.

⁵⁶¹ Armstrong, *Muhammad*, p. 165.

context of that state. A generalisation of those incidents and turning them into inseparable parts of the religion is neither authentic nor useful. Especially when we notice that, according to the Quran, the formation of a political state was not basically a part of the Prophet's mission determined by God.⁵⁶² There is no verse in the Quran that orders the Prophet to establish a state but, as showed above, there are verses that indicate such a thing is not a part of his Prophetic Mission.⁵⁶³ As such it is to say that it was a practical need of Muslims which led them, including the Prophet, to form their state in Medina. As Armstrong says if Muhammad, like Jesus, was born inside a properly functioning state he would not have needed to get involved in establishing a state in the first place so that he need a defence policy for it: "Jesus and St Paul did not have to worry about social and political order because it was already set up."⁵⁶⁴

Muslims, including the Prophet, were ordered by the Quran to run their public affairs through "consultation".⁵⁶⁵ The Muslim state was demanded and formed through the process of such consultation. Although the Medina state was more developed and humane comparing to its counterparts of the time it was by no mean a sacred existence.⁵⁶⁶ Most of the social rulings, including punishments for crimes, were the modified versions of what pertained to Arab society of the time.⁵⁶⁷ Islam's

⁵⁶² Not upon the Messenger is [responsibility] except [for] notification. And Allah knows whatever you reveal and whatever you conceal. (Q.5:99)

مَا عَلَى الرَّسُولِ إِلَّا الْبَلَاغُ وَاللَّهُ يَعْلَمُ مَا تُبْدُونَ وَمَا تَكْتُمُونَ (المائدة: ٩٩)

⁵⁶³ You are not over them a controller. (88:22)

⁵⁶⁴ Armstrong, *Muhammad*, p. 165.

⁵⁶⁵ And those who have responded to their lord and established prayer and whose affair is [determined by] consultation among themselves, and from what We have provided them, they spend. (Q.42:38)

وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَىٰ بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ (الشورى: ٣٨)

⁵⁶⁶ Armstrong, *Muhammad*, p. 169.

⁵⁶⁷ Hassan Yousefi Eshkevari, "Islam aghazi now dar tadavom-e sonnatha-ye kohan" (Islam a new start in continuation of the old traditions), 25 October 2013. Accessible via: <http://yousefieshkevari.com/?p=4049>

message was to redirect Arabs' (initially and then all humans) attention from the material life to the spiritual aspects of it. It was not the mission of the religion to manage Muslim's daily material life, Schacht argues: "... in the time of the Prophet, law as such fell outside the sphere of religion, and as far as there were no religious or moral objections to specific transactions or modes of behaviour, the technical aspects of law were a matter of indifference to the Muslims."⁵⁶⁸

Exclusivity of Prophetic politics, including warfare, does not mean that there was not anything in the political conduct of the Prophet and the early Muslims that could be useful for Muslims of later times. Of course later Muslims could, and in occasions did, learn from the early Muslims' way of running their material life. The biggest lesson that can be learnt from the early Muslims is how to reform the traditions of the period which have fallen out of efficiency, justice, spirituality, and morality. This job must be undertaken by the common human reasoning based on universal values such as justice, human rights, fairness, cooperation for peace, and so on. Reducing the message of Islam to a rigid set of rulings for a human's material life is an injustice against Islam which unfortunately is provoked by fiqh especially when it comes to the concept of jihad.⁵⁶⁹ Arguably the adoption of an aggressive military policy as 'offensive jihad' went against conditions of self defence experienced by the Muslim state during the Prophet's era. However the positive results of this new interpretation of jihad created a situation that few Muslims had the inclination to oppose. Today Muslim extremists are targeting the main message of Islam and destroying the whole ideals promoted by Muslims during their history

⁵⁶⁸ Schacht, *Islamic law*, p. 19.

⁵⁶⁹ When fiqh recklessly promotes forceful conversion through jihad it is vain to expect any reasonable person take promotion of the above mentioned high ethical values by followers of such fiqh seriously.

by using jihad in an aggressive way. After witnessing all these wrong things done in the name of jihad by extremists, now we can understand better why that worldly approach of offensive jihad had no place in Islam (both the Quran and Prophetic conducts).

Problems of offensive jihad

After the demise of the Prophet, the nascent Muslim society faced significant challenges mostly in relation to political issues such as taxation, obedience, and exclusive loyalty toward the central government, as discussed above. To solve the problems a policy was followed in order to suppress rebellions on the one hand and gain new resources on the other. In doing so the modified and trans-located concept of 'jihad' in its military and offensive form was employed to achieve both goals. The interior rivals were labelled as apostates so that jihad (at this stage as mere military force without any religious connotation to it yet) could be legitimately waged against them. For the second objective, offensive jihad against non-Muslim countries was introduced to provide the grounds for policies of territorial expansion.⁵⁷⁰ While the first usage of 'jihad' against local opposition during caliphate of Abu Bakr was rejected by many of the companions of the Prophet the second re-interpretation faced less resistance. Ali, the first Shia Imam and the fourth Caliph anyway, remained a stable part of the opposition against policies of the caliphs including their offensive jihad but he was forced to stay silent because of his fear for the stability of the Islamic society. Ali describes his silence to avoid division among the young Umma as "a thorn in the eye and a bone in the throat."⁵⁷¹

⁵⁷⁰ W. Montgomery Watt, 'Islamic Political Thought', quoted in S.M. Farid Mirbagheri, *War and Peace in Islam*, p. 118.

⁵⁷¹ Nahj al-Balaghah, Lecture No. 3.

فصبرت و في العين فذى و في الحلق شجا

The new sources of wealth gained by jihad changed the lifestyle of Arab Muslims dramatically.⁵⁷² Each Arab was given a big amount of money as a benefit collected from taxes over non-Arab lands such as Iraq, Iran, Egypt, Palestine, Syria and so on. Even those Arabs who stayed in Mecca and Medina and did not join the forefront activities, which were shifted outside Arabia at that time, still were given around 700 dirhams by the second Caliph from the year 20th of hijrah onward. For migrant Arabs the benefit was much higher. For example for migrant women 2000 up to 2500 dirhams was allocated.⁵⁷³ It was while non-Arab Muslims were almost ignored.⁵⁷⁴ The discrimination between Arab and non-Arab Muslims was so problematic that Umar himself in his final year of life said that if he survived that year he would put all Muslims of Arabs and non-Arabs equal, “the way that the Prophet used to do” he said.⁵⁷⁵ But he did not have the chance to do so and Uthman’s, the third Caliph, policies intensified such inequalities even more.

Umar himself believed that if Uthman gained the caliphacy he would give his relatives of the Umayyads the upper hand among Muslims and allocate ‘God’s money’ (public treasury) to them.⁵⁷⁶ There were many cases which proved Umar’s comment about Uthman to be right. For example, in one case Uthman ordered the governor of Basra (in today’s Iraq) to give all the taxes collected from that region to his son in law, Abdullah Bin Khalid Bin Asid.⁵⁷⁷ Uthman was consequently accused of being unjust which ended up with him facing a revolution. But it was

نهج البلاغه، خطبه سوم

⁵⁷² Armstrong, *Muhammad*, p. 55.

⁵⁷³ Yaqubi, *Tarikh*, Vol. 2, p. 40-41.

⁵⁷⁴ *Ibid*, p. 42.

⁵⁷⁵ *Ibid*, p. 42.

⁵⁷⁶ *Ibid*, p. 49.

⁵⁷⁷ *Ibid*, p. 62.

not only Uthman who faced such criticism. Other Caliphs were not immune from being accused for similar reasons. For example it is reported that Mughirah bin Shu`ba asked Umar to appoint him as the governor of Kufa (today Iraq) and when Umar reminded him that he was a lecher and people knew it, Mughirah's response was interesting. He replied "my debauchery harms myself while my tact benefits you".⁵⁷⁸ Umar was satisfied with Mughirah's reasoning and appointed him as the governor of Kufa.⁵⁷⁹ The majority of these moral crises and fighting over wealth and power was aftermath of Muslims gaining access to the new sources of wealth through jihad.⁵⁸⁰

This new trend, of which 'offensive jihad' was a fundamental part, despite some challenges it raised regarding dividing Muslims into privileged Arabs and under-privileged non-Arabs, was quite successful in the material sense. It attracted a great amount of wealth and power to the Islamic society. While these new developments satisfied many of ordinary Muslims it angered those who believed this much worldliness was against the main message and spirit of Islam, as we witnessed in chapter five when discussing Islamic mysticism. Since the first two caliphs themselves were living a plain and simple life their promotion of worldly policies had fewer backlashes. However the third caliph's pro-materialistic approach was so harsh that people revolted against Uthman, accusing him of giving privileges to his relatives. This contributed to his eventual murder. Uthman, the third Caliph, was a pious and close companion of the Prophet, but he was widely perceived to favour his own Umayyad relatives (whom, in turn, he viewed as simply more competent

⁵⁷⁸ Ibid, p. 44.

⁵⁷⁹ Ibid, p. 44.

⁵⁸⁰ Schacht, *Islamic law*, pp. 23-24.

and reliable than other folk). The older he became the more his relatives manipulated him to their own advantages.⁵⁸¹ Then when Uthman passed away the power was already in hands of Umayyads led by Mua`wiah.

After Uthman, Ali was appointed as Caliph. Ali's main strategy was to redirect the Islamic society back to the Prophet's way. When Ali refused to follow the path of the former Caliphs, he was in part opposing also the worldliness they promoted, including the 'aggressive jihad' they had followed and the consequences it had brought. In the event Ali lost his life as a result of the position he took. Despite the apparent failure of Ali in material sense, he was successful in showing an alternative path.⁵⁸² Ali on his first day of caliphate had addressed the people expressing his agenda:

*O people, be aware that the difficulties that you faced during the Prophet of God [because of his justness] have come upon you and seized you again. Your ranks must be turned around so that those people of virtue who have fallen behind should come forward and those who had come to the fore without being worthy should fall behind.*⁵⁸³

As his first speech where he announced his policy, Ali wants people to be prepared for 'justice' and not, for example, for jihad. Imam Ali's position against worldliness created a core position for him among those who opposed too much crass materialism. This position is still axiomatic among many Muslim groups including both Shia Dervishes and Sunni Sufis. After Ali the policies were redirected in favour of more worldliness and material goals. The Umayyad dynasty, which was

⁵⁸¹ Ayoub, *Islam: Faith and History*, p. 76.

⁵⁸² Mohammad Hossein Tabatabaei, *Shia`h*, tras. Seyyed Hossein Nasr, Arayeh publications, 1385/2006, p. 82.

⁵⁸³ Nahj al-Balaghah, the fifth sermon.

founded by Mua`wiah (r. 661-680) in the year 40/661, was a hereditary monarchy and as Mua`wiah himself decreed, he did not care about people's religious matters.⁵⁸⁴ Although the Umayyads were quite successful politically and formed a very strong Arab empire in the name of the Islamic caliphate, from a religious perspective they fell short of Islamic ideals and practices.⁵⁸⁵ For example Walid ibn Yazid (r. 743-744), the Ummayad caliph, is reported to have ordered his tent be set up on top of the most sacred place of Muslims, Ka`bah, so that he would be able to amuse himself when Muslims doing pilgrimage.⁵⁸⁶ There is a poem which is attributed to Yazid ibn Mua`wiah (r. 680-683), the second Umayyad ruler, which says: “[Banu] Hashim [claiming prophecy] played up for power, otherwise there was no revelation and no message [sent by God].”⁵⁸⁷ Even if this attribution be considered as suspicious from a historian's point of view still shows the ill-reputation of some Umayyad rulers in a way that provides the ground for such imputations. The fact that Yazid burnt and destroyed Ka`bah in his third year or rule is another sign of his ill reputation.⁵⁸⁸

To sum up, ‘jihad’ as a strategy for acquiring new lands and gaining new sources of manpower and wealth was first introduced after the death of the Prophet.⁵⁸⁹ Arguably, despite its comparatively massive short term material benefits, in the

⁵⁸⁴ Tabatabaei, *Shia`h*, p. 91.

⁵⁸⁵ Schacht, *Islamic law*, p. 24.

⁵⁸⁶ Tabatabaei, *Shia`h*, p. 97.

⁵⁸⁷ ‘laebat hashimo bil-mulk fa la khabaron jaa` wa la vahi nazal’.

لعبت هاشم بالملك فلا خير جاء ولا وحى نزل
ابن الاثير، البداية والنهاية، ج 8 ص 192.

Banu Hashim and Banu Umayyah [Umayyad] both were clans of the Quraish tribe but were rivals. Banu Umayyah led most of wars against Islam and finally after conquer of Mecca was one of the last groups which accepted Islam.

⁵⁸⁸ Mohammad Hossein Tabatabaei, *Shi`a*, trans. By Seyyed Hossein Nasr, Yeganeh Publications, 2002, p. 97.

⁵⁸⁹ Salehi Najafabadi, *Jihad*, pp. 41-43.

long run this new jihad led to the inevitable decline of Islamic society. Although such an expansionist policy in the name of jihad helped Muslims politically, religiously it was a great reversal. It brought to power rulers that fitted its requirements. It is the underlying reason why dynasties such as the Umayyads were able to rule the Islamic world for a long time. The semi-apartheid policy of Umayyads considering non-Arab Muslims as second class or '*mawali*' indicates the real intension behind jihad was gaining more revenues rather than, as claimed by jurisprudence, removing obstacles against the religion's message. Many of *mawali* and other under-privileged elements of Muslim society joined the Shia movement and also played a major role in the Abbasid revolution against Umayyads which in its turn proved the unsustainability of such worldly policies.⁵⁹⁰ In response to those who might support 'offensive jihad' exercised by Muslim dynasties it is enough to say that most of the achievements of military jihad was soon lost (as was the case in Europe and India) while what Muslims achieved through the preaching and living examples of pious traders, Sufi mystics, and teachers in South East Asia – a place that no Muslim army ever entered – has flourished in a way that even foriegn occupation and colonalisation was not able to eradicate.⁵⁹¹ Now that we have studied problems of 'offensive jihad' from a mainstream Muslim perspective, I will discuss in the following section inconsistencies of 'offensive/jurisprudential jihad' from Shia Islamic perspective.

Offensive jihad as a deviation from Shia theology

Previously I tried to show how 'preemptive jihad' gained ground in the Islamic society after the Prophet and what problems it presented the faith. Now I intend to

⁵⁹⁰ Ayoub, *Islam: Faith and History*, p. 128.

⁵⁹¹ *Ibid*, p. 92.

investigate how this notion found its way into Shia Islam and why ‘offensive jihad’ contradicts Shia theology. As we discussed earlier turning jihad into an offensive policy was a basic violation of many Islamic teachings and also the Prophetic defence policy. Now we are going to see if ‘preeptive/jurisprudential jihad’ fits within the main beliefs of Shia. Shias claim to be the most sincere followers of the faith who have not been affected by the whims of those corrupt dynasties which followed their own worldly interests in the name of Islam (read Sunni Islam).⁵⁹² As such their conduct should not contradict the Quran as the main source of the religion while believing in ‘offensive jihad’ requires such a contradiction. There are several clear Quranic verses that block the way for any offensive policy toward others.⁵⁹³ For inconsistencies of ‘offensive jihad’ with Quranic verses see Appendix No. 5. In addition to fundamental inconsistencies of ‘offensive jihad’ with the Quran, this notion has also theological inconsistencies with Shia Islam.

In Shia Islamic theology the Imam plays an important role in guiding the society of believers to the right path after the Prophet.⁵⁹⁴ Although Imams are not prophets they are understood to have the most genuine understanding of the religion. In other words when the Prophet transmits the message of God, the Imam translates it for human beings.⁵⁹⁵ According to this understanding of Imam ‘*Imamate*’ does not exclusively belong to Shia. Such a relationship between the Prophet and an Imam can be traced in the history of prophecy. It was Abraham who was given the covenant by God, but it was Issac and Ismail who, as his Imams, fulfilled it. Again

⁵⁹² See: Mohammad Hossein Tabatabaei, *Shia`h*, trans. Seyyed Hossein Nasr, Arayeh Publications, 1385/2006.

⁵⁹³ ... If they fight you, then fight them back. Such is the recompense of the disbelievers. (Q.2:191)

... فَإِن قَاتَلُوكُمْ فَاقْتُلُوهُمْ كَذَلِكَ جَزَاءُ الْكَافِرِينَ (البقره ١٩١)

⁵⁹⁴ Tabatabaei, *Shia`h*, pp. 248-277.

⁵⁹⁵ Aslan, *No god but God*, p. 182.

although it was to Moses that the divine law was revealed, the task fell upon Aaron who expanded it into the Holy Land. St. Peter who built the Church can be considered as an Imam regarding the preaching of the salvation introduced by Jesus and so on.⁵⁹⁶ Therefore the concept of Imamate, although different in name, has been a part of other Abrahamic religions and cultures as well. Therefore Shia believe the *Imamate* of Shia Islam was not a serious break-away from the mainstream monotheism in this regard.

Imams, as interpreters and executors of God's Will revealed to the Prophet, are believed by Shias to have been appointed by the divine decree (*nass* نص) through the Prophet and have been given the knowledge which is necessary for guiding the believers.⁵⁹⁷ The Imamate was so important that appointing the successor and the mundane executor was the very first thing that the Prophet accomplished when starting to preach Islam publicly.⁵⁹⁸ Beside the knowledge of guiding the society of believers, which is called 'Imamate', the Imams also had the divine right to do so which this right is called '*wilayah*'. *Wilayah* is the esoteric function of interpreting the inner mysteries of the Quran and Sharia and the responsibility of believers is to follow it.⁵⁹⁹ This *wilayah* has two sides: The '*wali*' (religious and spiritual leader) and the followers. Shia Islam is based on this mutual relationship between *wali* (or Imam) and his followers which is called '*nidham al-Imamah*', or system of imamate.⁶⁰⁰ According to doctrine of imamate, the Prophet, through divine designation, appointed Ali as his legatee or '*wasi*'. Ali in his turn appointed his son Hasan to succeed him as Imam, and Hasan appointed his younger brother, Hossein,

⁵⁹⁶ Ibid, p. 182.

⁵⁹⁷ Tabatabaei, *Shia`h*, p. 249.

⁵⁹⁸ Armstrong, *Muhammad*, p. 105.

⁵⁹⁹ Tabatabaei, *Shia`h*, p.21.

⁶⁰⁰ Ibid.

as Imam. Each Imam in turn designated his successor, usually his oldest son. The line of Imams continued to the twelfth Imam who, according to majority of Twelver Shias, did not die but went into an occultation in 941 and is expected to return with Jesus to establish true Islam and universal justice on earth.⁶⁰¹

Based on this 'Imamate System' Shias are supposed to follow the examples of the Prophet and, in circumstances where his conduct regarding a certain issue is not available, follow the Imams in all religious matters. Due to these points, it is important to ascertain the perspective of the Shia Imams with respect to 'offensive jihad' in order to understand classical Shia views on jihad. First of all we should notice that none of Shia Imams took part in jihad in its offensive form against other countries. For example, when Umar asked Ali, the first Imam of Shia, to become commander of the Muslim army attacking Iran he refused.⁶⁰² This was despite the fact that Ali was commander of most of the defensive wars during the Prophet's era. Being the commander of the Muslim army attacking the biggest Empire of the time was considered a great honour and refusing such a mark of respect needed a very strong reason.

The rejection of offensive jihad by Ali cannot be simplistically referred to his political disagreements and disputes with the Caliphs. Ali was commander of the Muslim army defending Medina against Arab tribal attacks during the caliphate of Abu Bakr.⁶⁰³ This demonstrates that while Ali was active in defending the Muslim state he refused to join the aggressive jihad. Again the second and third Imams in their turn refused to join jihad while they were quite active in defensive armed actions including defending the third Caliph and fighting the Umayyad rebellion.

⁶⁰¹ Ayoub, *Islam: Faith and History*, p. 134.

⁶⁰² Masoudi, *Murouj al-dhahab*, Vol. 1, p. 667.

⁶⁰³ Tabari, *Tarikh*, Vol 3, p. 360.

There is an interesting dialogue between Hussein, the grandson of the Prophet and the third Shia Imam, and one of his Shia followers concerning jihad which supports our argument here. Hussein decided to examine Abdul Malik bin Amr and asked him why he did not contribute to the jihad against Iran. The response of Abdul Malik was that they followed him (as their Imam) and since he did not take part then nor would they. Hussein liked his reply and said: *you are correct if it was the right thing we would do it before anyone else.*⁶⁰⁴

As soon as Ali became the Caliph there was a clear change in the Islamic government's policy because the administration shifted its attention inward.⁶⁰⁵ Ali announced clearly that he was intent on building a just society, as founded by the Prophet.⁶⁰⁶ As such the 'jihad policy' of the previous Caliphs was replaced by 'justice policy' of Ali. Ali ordered Malik al-Ashtar, his governor in Egypt, to be equally just and kind to all people, both Muslims and non-Muslims, he ruled over because: "they are either your bothers in faith or similar to you in creation."⁶⁰⁷ Non-Muslims were also supposed to enjoy the same level of justice as Muslims did. It is reported that after Ali was informed that a Jewish woman was robbed and her anklets removed from her feet, he said that for such a thing to happen to a non-Muslim (a protected minority) "is sad enough for a Muslim to die from grief".⁶⁰⁸ He put such an enormous stress on justice that was unacceptable for those who were pursuing exclusive privileges and upset the relatives of Uthmans (the Umayyads) who felt his murderers had not been punished adequately. Finally Ali paid the price

⁶⁰⁴ Muhammad ibn al-Hassan (famous as al-Hurr al-Amili), *Wasae'il al-Shia*, Vol. 11, p. 32.

و لو كان خيرا ما سبقونا اليه.

محمد بن الحسن الحر العاملي، وسائل الشيعة، جلد 11، ص 32.

⁶⁰⁵ Yaqubi, *al-Tarikh*, voll. 2, p. 154.

⁶⁰⁶ Masoudi, *Muruj al-Dhahab*, voll. 2, p.364.

⁶⁰⁷ اخ لك في الدين او شريك لك في الخلق

⁶⁰⁸ Nahj al-Balaghah, Lecture 95.

of this policy with his life. Justice was so important for him that it is said: “Ali was killed because of being uncompromisingly just”.⁶⁰⁹

From what have reached us of Ali’s policies during his caliphate it can be said that Ali aimed for a society of quality and justice rather than material quantity and the territorial expansion of the Islamic lands through jihad. This is why he was not intent on pursuing jihad in its offensive form, although he could use jihad as such to overcome internal problems. Attracting public attention to a foreign enemy has always been a common policy in unifying a society. Ali witnessed role of ‘offensive jihad’ in eliminating internal conflicts during the first and second Caliphs. It is not acceptable to say that Ali was not smart enough to use ‘jihad’ for that purpose; he was famous for his intelligence and his words collected in ‘*Nahj ol-balaghah*’ demonstrate this. Again it is not logical to say that Ali, was abstaining from military ‘jihad’ to avoid personal risk for his life. Ali says that his relationship with death is better than the relation of child with his mother’s breast.⁶¹⁰ As a proof for his claim it is reported that Ali laid on the bed of the Prophet during the night that Pagans of Mecca wanted to assassinate the Prophet.⁶¹¹ He saved the Prophet’s life through risking his own. Ali also took part in all major battles defending the Muslim state during the Prophetic era. Thus accusing Ali of refusing to undertake military ‘jihad’ because of fear for his life becomes implausible. While Ali was experienced and smart enough to know the benefits of using military jihad against foreigners to bring unity among his subjects and was brave enough to approach such an aggressive policy if he believed in it he would not hesitate in undertaking such policy. It is surely his disbelief in ‘offensive jihad’ that explains a policy of avoiding needless

قتل على لشدة عدله⁶⁰⁹

⁶¹⁰ Nahj al-Balaghah, Sermon No. Five.

⁶¹¹ Masoudi, *Murouj al-dhahab*, Vol. 1, p, 635.

conflict. Members of the Umayyad dynasty pursued the ‘offensive jihad’ in the same time period and were successful in it. This means when the situation allowed the Umayyads, who did not enjoy the same level of public support and legitimacy that the ‘Righteous Caliphs’ (including Ali) did, Ali could follow a similar policy if he believed in it. Thus it could be said that rather than being imposed on him by external conditions Ali’s choice of rejecting ‘offensive jihad’ was free and must have been rooted in his disbelief in such an offensive policy.

The point of the foregoing discussion is to show that Ali was not in favour of offensive jihad which was the policy of the former caliphs. According to what has been recorded Ali was able to become caliph after Umar on the condition that he would accept the policies of the first two caliphs.⁶¹² Ali strongly refused to follow the previous Caliphs’ policies and therefore was rejected by the board in charge of appointing the new caliph after Umar. Uthman agreed the condition and became the third caliph.⁶¹³ Rejecting the conditions of the board and losing the chance to become caliph does not necessarily mean that Ali was indifferent toward government. It is obvious that controlling the government was vital for at least a part of Ali’s programs especially for creating a ‘just society’ in its Prophetic model. Then why didn’t he follow the previous two Caliphs’ policies and pursue political power? The only reason that justifies Ali’s refusal is that his way was fundamentally different from the previous Caliphs and that is why he felt unable to compromise. Ali’s policy in creating a ‘just society’, which is elaborated in *Nahj al-balagh* especially in the Sermon No. five, as his main difference with the previous Caliphs who were after building a big empire, does not mean that the expansion of Islam

⁶¹² Yaqubi, *Tarikh*, Vol. 2, p. 54.

⁶¹³ *Ibid*, p. 54.

had no place in Ali's plan. Building a just society which would be followed by other nations voluntarily without any need for using force (armed jihad) was a wise replacement for the previous Caliphs' 'offensive jihad'. For Ali this could be done by going back to the ideal society that was founded by the Prophet.⁶¹⁴ The expansion of Islam in the South East Asia, without involvement of any militaristic jihad, proves Ali right.

Other Shia Imams' position toward 'offensive jihad'

Although Ali's position toward jihad, because of his role as the first Imam who also ruled the Islamic empire for over five years, is more important still other Shia Imams' position toward jihad is also illustrative of how offensive jihad is (due to system of imamate) against Shia theology. With respect to subsequent Imams, according to Shia beliefs all Imams were killed by the government of the day.⁶¹⁵ What was so important for Shia Imams that they were ready to sacrifice their lives for it? We know that not one of Shia Imams took part in any military jihad and they even discouraged their followers to do so.⁶¹⁶

If military jihad was considered a religious duty, Shia Imams would have put their lives at risk for it because they, as their fate showed, were not disengaged from social affairs and their murder by their governments is the proof for that. The best logical explanation for the disengagement of Shia Imams from the concept of military jihad is that they did not believe in it. This must have been because it was

⁶¹⁴ Nahj al-Balaghah, Sermon No. five.

⁶¹⁵ Muhammad Baqir Majlesi, *Bahar al-Anwar*, Vol. 17, p. 405.

قال رسول الله: ما من نبيٍّ أو وصيٍّ إلا شهيدٌ.
بحار الانوار، علامه مجلسي، ج 17، ص 405 و ج 40، ص 139

⁶¹⁶ Al-Hurr al-Amili, *Wasae'il al-Shia*, Vol. 11, p. 32.

و لو كان خيرا ما سبقونا اليه.
محمد بن الحسن الحر العاملي، وسايل الشيعه، جلد 11، ص 32.

against their principles and since Shia Imams rejected it then it must be seen against the Shia beliefs. If this is the case then the question now is how military jihad entered Shia jurisprudence.

Despite all its theological inconsistencies, as Salehi in his book 'Jihad in Islam' explains, since offensive jihad offered the Islamic society power, honour, and glory it was difficult for Muslims to resist supporting it. Early Shia did not criticise it publicly.⁶¹⁷ As Abdulkarim Soroush observes Muslims, including Shias, like every human being favoured glory, power, wealth and honour and should not be blamed for that.⁶¹⁸

Although this, to some degree, explains why Shias remained silent about this offensive form of jihad still does not explain how it entered Shia jurisprudence. The answer to this question can be found in Schacht's theory which indicates although the early Shias differed with Sunnis on theological issues since they did not have their own jurisprudence such disputes had not affect jurisprudence:

⁶¹⁷ Salehi Najafabadi, *Jihad*, pp. 41, 43.

آیت الله صالحی نجف آبادی در مورد دلیل روی آوردن فقها به این قول که آیات مقیده جهاد منسوخ شده اند و جهاد ابتدایی واجب است به عوامل سیاسی بیشترین نقش را می دهد:

سؤال مهم و تعجب آوری که در اینجا وجود دارد این است که چه عواملی در کار بوده است که این مطلب مسلم که باید مطلقاً حمل بر مقیدات شوند نادیده گرفته شده است؟ مطلبی که در عرف قانون شناسی و تفسیر قوانین، همه اهل فن به آن اذعان دارند و در همه زمانها و همه نحلها به آن عمل می شده و می شود چگونه در مورد آیات جهاد به آن عمل نشده است، و در نتیجه چهره اسلام در نظر جهانیان نازیبا نشان داده شده و قانون فطری جهاد دفاعی که مدلول آیات مقیده است تحریف شده و بجای آن جنگ ابتدایی برای تحمیل دین به عنوان جهاد معرفی شده است؟ آیا سیاست در این مسئله تاثیر داشته است و آیا افرادی مانند ربیع ابن انس و عبدالرحمان بن زید بن اسلم (که امام شافعی بدون نام بردن از آنها به نقل از دیگران این قول را نقل کرده است) تحت تاثیر جو حاکم قرار داشته اند که خلفای زورگو برای کشور گشایی به جنگهای ابتدایی اقدام می کرده و خون مردم صلح طلب را به نام جهاد اسلامی می ریخته اند تا دامنه ملک خود را گسترش دهند؟ بدیهی است که در چنین فضایی اختناق شدید حاکم است و کسی جرأت ندارد فتوایی بدهد یا آیه ای از قرآن را طوری تفسیر کند که لازمه اش محکوم شدن اینگونه حمله های نظامی ظالمانه باشد که به دست خلفای ستمگر انجام می گرفت.

در هر حال اینکه کسی که بگوید آیات مقیده جهاد که جنگ ابتدایی را تجویز نمی کند منسوخ شده و جنگ ابتدایی واجب است با سیره خلفای ستمگر هماهنگ است نه با سیره رسول خدا.

نعمت الله صالحی نجف آبادی، جهاد در اسلام، نشر نی، 1382، ص 43 و 41.

⁶¹⁸ Abdulkarim Soroush, "Hele barkhiz ke andishe degar bayad kard.", Accessible via: <http://drsoroush.com/fa/>

Recent research has shown that the ancient sects of Islam [Khrijite and Shia], at the time they hived off from the orthodox community, could not have shared with the majority the essentials of a system of law which did not as yet exist. For some considerable time, and during the second and third centuries of Islam in particular, they remained in sufficiently close contact with the Sunni community for them to take over Islamic law as it was being developed in the orthodox schools of law, making only such modifications as were required by their particular political and dogmatic tenets.⁶¹⁹

When Shias decided to form their own jurisprudence they based it on the dominant Sunni schools of law and only modified whatever was seen in clear contrast with their theological beliefs and jihad, mostly because of its benefits, was not seen as such, Salehi argues.⁶²⁰ Jihad in its offensive form entered in Shia Islam through works of the first Shia jurist al-Tusi. Abu Jafar Muhammad ibn al-Hasan al-Tusi famous as Shaikh Tusi, who because of his special position in Shia jurisprudence is called ‘the leader of clan [of Shia]’, or *shaikh al-taifah*, was in fact a follower of Sunni methods of jurisprudence in his day. Even when Shaikh Tusi, started introducing a separate jurisprudence under the name of ‘*fiqh al-imammyyah*’ distinct from ‘*fiqh al-`ammah*’ or ‘jurisprudence of the mainstream’ he based his work on book of Shafi`ei, ‘al-Umm’, to the extent that sometimes even wordings of the two books are the same or quite close.⁶²¹

⁶¹⁹ Schacht *Islamic law*, p. 16.

⁶²⁰ Salehi, *Jihad*, p. 46.

⁶²¹ See: Salehi Najafabadi, *Jihad dar Islam* (Jihad in Islam), Nei Publications, 1382/2003, pp. 41, 43.

Because subsequent Shia jurists follow al-Tusi in other issues, they also followed him with respect to preemptive jihad even though it is arguably theologically against the main Shia principle of *Imamate*.⁶²²

در محیطی که شیخ طوسی در بغداد به مجاهدت علمی می پرداخت روش معمول او در بحثهای فقهی و تفسیر قرآن و 622 سایر علوم اسلامی این بود که به منابع عامه (اهل سنت) مراجعه و از آنها اقتباس می کرد. ... در رشته فقه نیز ایشان مراجعه به کتابهای فقهی عامه را در دستور کار قرار داده است، و کتاب "مبسوط" را که مفصل ترین کتاب فقهی اوست به روش اجتهادی آنان نوشته است، از این رو طبیعی است که او گاهی از اجتهادات و افکار رایج در آن محیط متأثر شود و فتوایی را که عموم به آن ملتزم اند بپذیرد و در کتابهای فقهی خود بیاورد. در جوی که فقه عامه بر حوزه های علمیه حاکم بود از شیخ طوسی و هر فقیه دیگری جز این انتظار نمی رفت، و از این جاست که میبینیم او در مسئله جهاد و در موضوع مورد بحث همان نظری را که امام شافعی در "ام" اظهار کرده است در کتابهای فقهی خود آورده است و بی آنکه آن را مورد نقد قرار دهد پذیرفته است.

صالحی، جهاد، ص 46.

Chapter Ten

Commonalities and Disparities of Suicide terrorism and Jihad in Shia jurisprudence

Introduction

At the first glance the name of this section might look quite irrelevant because Shia jurisprudence, despite all superficial changes, has maintained its classical nature both in subject matters and methodologies, as has been previously demonstrated. Accordingly, suicide terrorism as a modern phenomenon is not covered by Shia jurisprudence and its law of war directly. Yet this cannot be an excuse for not investigating suicide terrorism from the perspective of Shia jurisprudence because in reality suicide terrorism is undertaken in the name of Islam, including the Shia branch, using Islamic juridical language. In this chapter I will try to do an unbiased non-apologetic and at the same time objective critical study of shared elements of religiously legitimate use of violence in Shia jurisprudence and suicide terrorism to find out how exactly they match and how much they differ.

Shia jurisprudence and violence

As we learnt previously, the main rulings with respect to the use of armed violence in Shia jurisprudence are covered by the book of jihad. To start our discussion about position of Shia jurisprudence about suicide terrorism first of all we need to remove some primary obstacles and prepare the ground for our examination. As pointed out before, jihad and suicide terrorism not only belong to different times but also are product of their exclusive surrounding

environment as well. Because of being lodged in two different contexts of time/space, it is not practical to compare suicide terrorism and the Shia concept of jihad directly. Accordingly, and to prepare the required ground for specifying the position of substantively old Shia jurisprudence in relation to the recent phenomenon of suicide terrorism, it is necessary to break down both jihad and suicide terrorism into their fundamental constituting elements to the extent that these elements be identifiable independent from elements of time/space. The next step is to compare these essential elements of jihad and suicide terrorism with each other and examine the level of overlapping/commonality on the one hand and inconsistency/contradictory on the other.

In part one we derived essential and distinguishing elements of terrorism and clarified that suicide terrorism has no cardinal difference with other forms of terrorism except for the tool it uses. We found out that terrorism has four distinguishing elements which all-together differentiate it from other forms of violence, and that the suicide version of it is only different in respect to the tactics it uses for achieving the same goals. To avoid confusion, and make a valid investigation of suicide terrorism in Shia jurisprudence possible, I do not use jihad as a blanket term covering all forms of violence all together, the way that extremists do it these days. I will refer to the requirements of each of different legitimate use of force in Shia jurisprudence, which is governed by the concept of jihad, separately. Similar to the same technique which was used for terrorism, I will highlight separational characteristics of each of legitimate use of force which distinguish it from other forms of jihad before comparing it with suicide terrorism. As such I will compare different forms of jihad and

suicide terrorism based on their constituting elements. The four essential and constituting elements of jihad (in its different forms) and suicide terrorism which will be compared are: 1- Executors, 2- Targets, 3- Means, and 4- Goals. Differences in these elements are what differentiate different forms of jihad from each other and also, possibly, separate them from suicide terrorism.

War in Shia jurisprudence

Shia jurisprudence is quite strict about use of violence. At private level, any illegitimate⁶²³ use of violence is subject to the relevant punishment called *hadd*,⁶²⁴ for physical punishment, and *diah*,⁶²⁵ for non-physical punishment.⁶²⁶ At social level, all varieties of legitimate forms of the use of violence, either by state or non-state actors, are treated under the title of jihad in the Shia Islamic jurisprudence. For example while theft is punished by *hadd*, highway robbery (as an armed/violent offence) is addressed by jihad. According to Shia jurisprudence it is a well-established principle that use of violence needs religious permission and any form of armed violence without religious permission is seen as a sin and therefore rejected. Such a prohibition is based on the Quranic verse which rejects transgression.⁶²⁷ For a jurisprudentialist Shia all religious permissions are exclusively determined by the Islamic law. Regarding the use of armed force it is the law of war, or jihad,

⁶²³ Allamah Hilli: Harming anyone who is not sentenced to punishment, or ‘al-nafs al-muhtarimah’, is forbidden. (Tafsirah al-Mutialimin, the book of qisas, p. 201, 205).

⁶²⁴ ‘Qisas’ means symmetrical physical punishment.

⁶²⁵ ‘Diah’ means compensation [literally financial punishment] and applies when the intention to harm is absent, or the exact symmetrical physical punishment is not possible, or the victim chooses compensation.

⁶²⁶ Allamah Hilli, *Tafsirah al-Mutialimin*, pp. 202-218.

⁶²⁷ Fight in the way of Allah those who fight you but do not transgress. Indeed. Allah does not like transgressors. (Q.2:190)

وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ (البقره ١٩٠)

in Shia jurisprudence which regulates who can target whom, how, and why. I will not discuss *jus ad bellum*, or the justification of armed conflict, out of its jurisprudential context and as a separate concept from *jus in bello*, because jurisprudence as the source of legitimization of the use of force in our current discussion does not separate them as such and see them together as one concept. Therefore I shall only focus on jurisprudential justifications of war along with the rules of conducting war, according to Shia jurisprudence.

In Shia jurisprudence there are six forms of the legitimate use of armed violence: 1- Jihad (preemptive attack), 2- Defa` (defence), 3- Qital al-Boghat (Confronting rebels), 4- Qital al-Muharibin (fighting the fearmongers), 5- Ribat (guarding borders), 6- Nahi anil-munkar bil-yad (physical forbidding of evil).⁶²⁸ In what follows I will introduce the legitimate executors, targets, means, and goals of each of these forms of armed violence and will discuss their possible conformity with suicide terrorism. To do this I will address the following four questions about each of the legitimate forms of the use of force in Shia jurisprudence:

- 1- Who are the legitimate executors of jihad?
- 2- Who are the legitimate targets in an armed conflict?
- 3- What is the legitimate way of the use of armed force?
- 4- What is the objective of a legitimate use of armed force?

⁶²⁸ Muhammad ibn Jamal al-Din Macci al-A`meli (famous as Shahid Thani), *al-Rawdah al-Bahyyah fi sharh al-Luma`h al-Dimashqyah*, Vol. 2, pp. 379-380.

Legitimate warfare in Shia jurisprudence

Jihad

According to Tusi, the first Shia jurist whom other Shia jurists have followed in almost all of major subjects of jurisprudence, jihad means attacking non-Muslims countries preemptively for the propagation of Islam and is a conditional/collective obligation (*fard kifayah*)⁶²⁹ applicable to all mature,⁶³⁰ healthy,⁶³¹ capable males.⁶³² This definition is the primary meaning of jihad in Shia jurisprudence. However, since all forms of the legitimate use of force are mentioned in ‘the Book of Jihad’, in Shia jurisprudence there is confusion that all of them are identified as jihad. It was the segmentation and structure of Shia jurisprudence that arguably has provided the ground for such misinterpretation. The great Shia jurist, Zain al-Din al-Juba`i al-Amili, famous as *Shahid Thani* or the second martyr, in his book ‘al-Rawda al-Bahyya’ (which is a commentary on “al-Luma`h al-Dimashqyyah” of Muhammad Macci al-Amili famous as *Shahid al-Awwal* or the first martyr, and has been taught in almost all Shia Seminaries around the world for centuries), clearly mentions that in Shia jurisprudence jihad means the category of preemptive attack against non-Muslims.⁶³³ Jihad in its primary

جهد الكفار فرض في شرع الاسلام، و هو فرض على الكفايه اذا قام من في قيامه كفايه سقط عن الباقيين⁶²⁹
ابى جعفر محمد بن الحسن الطوسي، الاقتصاد: الهادى على لارشاد، سلسله الينايع الفقهيه، جلد 32، موسسه الفقه الشيعه،
1413هـ.ق 1993 م، ص3.

⁶³⁰ From jurisprudential perspective any male who had reached puberty or passed the age 15 is mature and therefore religiously ‘*mukallaf*’ or responsible for religious duties.

⁶³¹ By being healthy jurisprudence means one who does not suffer from disabling problems such as being weak, blind, cripple, insane, or be above 50 years old.

⁶³² One should be able to afford all his family needs before going to jihad and therefore should not be that poor that his family suffer from his absence. (Allamah Hilli, *Ershad al-azhan*, pp. 191-2)

⁶³³ Zain al-Din al-Jaba`I al-Amili, *al-Rawdah al-Bahyyah fi sharh al-Luma`h al-Dimashqyyah*: Kitab al-Jihad, al-Adab publications, Najaf, Iraq, 1387A.H./1967C.E., p.380.

و هو (الجهد) اقسام: جهد المشركين ابتداء لدعائهم الى الاسلام، و جهد من يدهم على المسلمين من الكفار بحيث يخافون استيلائهم على بلادهم او اخذ مالهم و ما اشبهه و ان قل، و جهد من يريد قتل نفس محترمه... و البحث هنا عن الاول.

meaning has several other names of which the most common are: jihad al-Da`wah (missionary jihad or jihad of invitation), jihad ibteda`i (initiative or preemptive jihad), and jihad al-kuffar (fighting unbelievers).⁶³⁴

For Tusi, Jihad, in its primary meaning, is only allowed by virtue of the command of the Immaculate Imam. Jihad is not only not subject to reward if waged under a non-Immaculate Imam, or as non-state actors (as independent of the government), but it is a sin and punishable in the hereafter. If someone takes part in a jihad without the command of the Immaculate Imam or independent from the government, and either achieves a lot or is injured or killed, he not only will not be rewarded but his great effort is sinful and he will be punished (by God) for it.⁶³⁵ Jihad has only one goal and that is to force non-monotheists to convert to Islam, or for monotheists⁶³⁶ to submit to the rule of the Muslim state.⁶³⁷

Since Shia jurisprudents, as we witnessed in chapter eight, have considered jihad as an act of worship, or God's right, then there was a need for indicating the timing for it as well. Shia jurists consider jihad compulsory at least once

زين العابدين الجبعي العاملي (الشهيد الثاني)، الروضة البهية في شرح اللمعة الدمشقية، مطبعة الاداب، النجف، 1387هـ.ق. 1967م، صص 379-380.

⁶³⁴ Shahid Thani, *al-Rawdah al-Bahyyah*, Vol. 2, p. 379.

⁶³⁵ Tusi, *al-Mabsut*, Selselah, p. 77.

و الجهاد مع ائمه الجور او من غير امام اصلا خطأ قبيح يستحق فاعله الذم و العقاب، ان اصيب لم يوجر و ان اصاب كان مأثوماً.

ابى جعفر محمد ابن الحسن الطوسى، المبسوط فى فقه الاماميه، سلسله الينابيع الفقيهيه، مؤسسه فقه الشيعه، بيروت، 1413هـ.ق. 1993م، ص 77.

⁶³⁶ The jurisprudential term for monotheists is 'ahl al-kitab' or people of the Book which means Jews, Christians, Zoroastrians, and others who believe in one god.

⁶³⁷ Abu Ja`far Muhammad al-Tusi famous as Shaikh Tusi, *al-Iqtisad, Kitab al-Jihad*, pp. 3-4.

فى من يجاهد من الكفار: كل من خالف الاسلام و انكر الشهادتين و جب جهاده و قتاله، و هم ينقسمون قسمين: احدهما لا يرجع عنهم الا ان يسلموا او يقبلوا الجزية و يلتزموا شرايط الذمه، و هم اليهود و النصارى و المجوس ... و من عدا الثلاث فرق يجب قتالهم الى ان يسلموا او يقتلوا.

الطوسى، الاقتصاد، صص 3-4.

a year.⁶³⁸ In another words, according to Shia jurisprudence Muslims are religiously obligated to attack non-Muslim countries at least once a year and force them to convert to Islam (if non-monotheist) or submit to the Islamic rule (if monotheist). This has created an unacceptably aggressive image of jihad even among Shias themselves. The aggressiveness of jurisprudential jihad is so harsh that many modern Shia scholars have tried to re-interpret it in a way that softens its image, but rulings of the classic jurists are so clear and numerous repeated and emphasized that all efforts for providing a soft gloss on it has remained fruitless. What modern Shia ‘mujtahids’ do to keep some distance from the problems of harshness of jihad in its primary meaning is to have simply removed it from their books of religious codes of conduct or ‘*risalah*’. For example *risalah* of Ayatollah Khomeini, as the most influential jurist of the century, lacks any part on jihad.

In addition to the aggressive image of jihad, there are three points about jihad that make jihad look vulnerable to leading to uncontrolled use of violence, including a version of terrorism. First; Jihad amounts to a religiously legitimate use of force which allows preemptive attack against peaceful people, and this means the element of reaction against aggression towards Muslims is absent and consequently; if this is generalized, then no non-Muslim would be safe in respect to it. Second, jihad in its offensive form might consider unbelief punishable⁶³⁹ and this can open the way for those

⁶³⁸ See for example: Muhammadiyah Macci al-Amili famous as Shahid al-Awwal, *Al-Luma`h al-Dimashqyyah*, Vol. 2, al-Adab publications, Najaf, Iraq, 1387A.H./1967C.E., p.380.

و اقله مره فى كل عام

محمد ابن جمالدين مكى العاملى (الشهيد الاول)، اللمهه دمشقيه، مطبعه الاداب، النجف، 1387هـ.ق 1967م ص 380.

⁶³⁹ Although Shia` jurists do not mention unbelief as the justification for jihad but in reality no other justification could be found because non-Muslim are targets of jihad exclusively because of their difference in belief and not for attacking Muslims or so on.

who want to deploy violence against non-Muslims. Third, jihad is the term which is used publicly by Muslim terrorists to justify their actions so that even without any further evidence it is suspected for promoting terrorism.

To respond to the above arguments, which have the potential to relate jihad to a broad range of violence including terrorism, it should be said that the premises have been based on an obvious disregard of several characteristics of jihad which regulate conduct of Muslim fighters during armed conflicts in a way that, in fact, cannot lead to terrorism. As was mentioned previously, it is not the case that use of violence against non-Muslims per se and unconditionally is accepted by Shia jurisprudence, and it is clear that an unapproved use of force is not only without reward, but is indeed punishable. In response I investigate jihad's legitimate executors, targets, means, and goals to discern if they can apply to terrorism in one way or another.

Legitimate executors of jihad

Jihad, according to Shia jurisprudence, only can be commanded by the Immaculate Imam. Because of sanctity of human life in Islam, in waging jihad the Immaculate Imam himself or his particular representative (*na`ib al-khas* (نايب الخاص للجهاد) for jihad, and not general representative (*na`ib al-amm* (نايب العام), must lead the Muslim army.⁶⁴⁰ Only mature, healthy, capable Muslims are supposed to contribute to jihad.⁶⁴¹ Any war commanded by a non-

⁶⁴⁰ Shahid al-Awwal, *Al-Luma`h al-Dimashqyyah* , p. 381.

و انما يجب الجهاد بشرط الامام العادل او نايبه الخاص و هو المنصوب للجهاد. الشهيد الاول، للمعه، ص 381.

⁶⁴¹ Shahid Thani, *al-Rawdah al-Bahyyah*, p. 382.

و يشترط في من يجب عليه الجهاد بالمعنى الاول (الابتدائي) البلوغ و العقل و الحريه و البصر و السلامه من المرض المانع من الركوب و العدو و العرج البالغ حد الاقعاد او الموجب للمشقة في السعي لا تتحمل عاده و في حكمه الشيخوخه المانع من القيام به (الجهاد) و الفقر الموجب للعجز عن نفقته و نفقه عياله و طريقه و ثمن سلاحه.

الشهيد الاول، للمعه، ص 382.

Immaculate Imam or his representative, or including any unqualified executors is an unholy and evil one.⁶⁴² Jihad independent from the government and by non-state actors is alike the above case and illegitimate.

Terrorism, in which its executors are sub-national groups, differs from jihad in this sense. Since jihad has a systematic, substantive, non-detachable, and organic relation with the Islamic government this differs it from terrorism in the issue of executors. Jihad must be launched explicitly thus use of armed force by clandestine agents is not included in jihad. Moreover hiding the real identity, as what clandestine agents do, in case of war is banned by Islamic jurisprudence as regarded to be included in “tricks”.⁶⁴³

Illegitimate targets of jihad

Every non-Muslim, who has similar conditions to those Muslims who are qualified to do jihad on the Muslim side, is a legitimate target of jihad on the non-Muslim side. There is only one exception and that is the (non-Muslim) clergy which is an illegitimate target of jihad. It is worthy to mention that a Muslim clergy (if such a title was applicable for Muslim religious scholars of the time at all) is supposed to take part in jihad and therefore is treated differently by Islamic jurisprudence from his non-Muslim counterparts.

Unlike what might look at the first glance, in Shia jurisprudence the targets of jihad are not based on their belief. In Shia jurisprudence there is a specific definition for civilians and according to this definition they have immunity during war and their belief is not of relevance in this regard. According to

⁶⁴² Tusi, *al-Mabsut*, p. 77.

⁶⁴³ ويكره التبييت و هو النزول عليهم ليلا
الشهيد الاول، اللمع، ص 394.

Shia jurisprudence non-combatant has its exclusive meaning and only includes those who are not able to fight and not those who are not practically fighting but are in the camp of enemy. Only the clergy is an exception because it is supposed that clergy have no motivation to fight. Other than clergy, all mature males who are capable of fighting are considered military members of the enemy, with the rest considered to be civilians. To avoid confusion we use the term civilians instead of non-combatants with this extra explanation that only the five following groups are considered civilians by many jurists and so enjoy immunity during jihad. Although like many other issues there is no full agreement among jurists about who precisely qualifies to be a legitimate target in 'exceptional situations'. The five groups of the enemy's people which are illegitimate targets such that harming them during armed conflict is impermissible are as follows:

1. Women

There is a unanimous agreement among Shia jurists that the women of an enemy are illegitimate targets during war.⁶⁴⁴ To avoid any possible misunderstanding it should be mentioned that despite this agreement, jurists' opinions vary when exceptional conditions require exceptional action, which will be discussed as "permissibility of targeting human shield" later. Many jurists not only believe in impermissibility of targeting an enemy's women in general but also believe that even when women help the enemy's army and contribute to fighting they still keep their immunity.⁶⁴⁵ The only exception is

⁶⁴⁴ See for example: al-Iqtisad, al-Khilaf, and al-Mabsut of Tusi, Tabserah al-Mutia`limin, Talkhis al-Maram, and al-Risalah al-Fakhryyah of Allamah Hilli, al-Doroos al-Shary`yah, and al-Luma`h al-Dimasqyyah of Shahid Awwal, and al-Rawdah al-Bahyyah of Shahid Thani.

⁶⁴⁵ Mohammad Ibn Idriss al-Hilli, famous a Mohaqiq Hilli, al-Saraer, Vol. 2, Moassesat ol-Nashr al-Islami, p. 177.

that if someone feels danger for his life from a woman during the fighting then he can defend himself based on the obligation of self-defence, and this is not jihad.⁶⁴⁶ However Allamah Hilli insists that the one defending himself against illegitimate targets including a woman's attack in the battle-field, must not intend to kill them.⁶⁴⁷

2. Children

Children of the enemy enjoy the same immunity as women. Children are defined jurisprudentially in a way that includes those who have not reached puberty and are not above 15 years old. The same criteria is applied for Muslims regarding the age when jihad becomes a religious obligation for them. As such all of those groups, with exception of clergy, who are supposed to contribute to jihad on the Muslim side are considered military members on the enemy's side. Youngsters should not be fought with the intention of killing them when they attack a Muslim soldier. Rather, only stopping the danger to one's life is permitted, with the least harm to the young attacker. The term 'exigency', or *darourah* (ضروره), has been used as the condition for fighting immature youngsters and women, and exigency clearly excludes fighting with the intention of killing.⁶⁴⁸

And also Shahid al-Awwal, *Al-Luma`h al-Dimashqyyah*, p. 393.

ولا يجوز قتل الصبيان و المجانين و النساء و ان عاونوا.

الشهيد الاول، اللمعه، ص 393.

⁶⁴⁶ Tusi, *al-Mabsut*, Selseleh, p.76.

فانه يجب حينئذ دفاعهم و يقصد به الدفاع عن النفس ... و لا يقصد الجهاد

الطوسي، المبسوط، ص 76.

⁶⁴⁷ Allamah Hilli, *Talkhis al-Maram*, p. 204.

⁶⁴⁸ Ibid.

و لا يجوز قتل المجانين و الصبيان و النساء و ان عن ... الا مع الضروره

العلامه الحلي، تلخيص المرام، ص 204.

3. The elderly

Old-aged people are illegitimate targets in an armed conflict according to Shia jurisprudence.⁶⁴⁹ Some jurists include aged people in the category of ill ones but many of them mention this group as ‘shaikh’ or ‘elderly’ separately. Based on some traditions, the age of 50 and above has been indicated to exclude a male from being a militarily legitimate target. But most jurists confine themselves to the term “elderly” and a few add the lack of capability of fighting as well.⁶⁵⁰

4. The ill

All ill people are considered illegitimate targets of jihad by Shia jurisprudence. The term ill, jurisprudentially, is quite broad and includes the insane, the incapacitated, the blind, the cripple, the (temporarily) sick, and all those who are not capable of fighting. All are included in this category and enjoy immunity during war.⁶⁵¹

5. The clergy

The clergy, being those men of religion who devote themselves to worship, constitutes the final group who enjoy immunity during war.⁶⁵² Female clergy,

⁶⁴⁹ Tusi, *al-Khilaf*, p. 10.

الشيوخ الذي لا رأى لهم و لا قتال فيهم كالرهبان.
الطوسي، الخلاف، ص 10.

⁶⁵⁰ Shahid al-Awwal, *al-Luma`h al-Dimashqyyah*, p. 393.

و لا يجوز قتل الشيخ الفانى.
الشيد الاول، للمعه، ص 393.

⁶⁵¹ Allahmah Hillih, *Talkhis al-Maram*, Selseleh, p. 204.

و لا (يجوز قتل) الاعمى و لا المقعد و لا التمثيل و لا الغدر و لا الغلول.
العلامه الحلى، تلخيص المرام، ص 204.

⁶⁵² Ibid, p. 204.

و لا (يجوز قتل) الرهبان فى الصوامع و ما اشبهها من المواضع التى حبسوا انفسهم فيها.
العلامه الحلى، تلخيص المرام، ص 204.

where and if applicable, are not mentioned in this group because they already have been included in the first group for woman.

Some jurists believe there is a technical difference between women, children, and the insane on one side, and the aged, other groups of the ill, and clergy as the second group in immunity. According to them the first group enjoys absolute immunity to the extent that even if they fight a Muslim soldier he is not allowed to fight them back with the intention of killing them, so must confine himself to saving his life without any intention of harming them. But with the second group he can kill them when is attacked by them.⁶⁵³.

In my opinion nowadays, since the capability of fighting requires receiving military training and access to necessary equipment and military supplies, then those who are not members of military, para-military, or militant groups should be considered as incapable of fighting in its modern sense and therefore illegitimate targets in situation of war. To sum up, no matter what the enemy's conduct is⁶⁵⁴ the above mentioned groups are not permissible targets of jihad and since it is a self-imposed law implemented by those rulings that regulate Muslims' conduct during war, even with accepting the supposition that other countries are at war with Muslim countries, targeting these groups is impermissible according to Shia jurisprudence. As such any attack, including suicide attacks, against one of these five groups is

⁶⁵³ Allamah Hilli, *Talkhis al-Maram*, p. 204.

الا ان يكونوا مقاتلين
العلامه الحلي، تلخيص المرام، ص 204.

⁶⁵⁴ O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the animosity of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do. (Q.5:8)

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا اعْبُدُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ (المائدة: ٨)

religiously forbidden regardless of their countries' policies and way of treating Muslims.

Legitimate way of fighting in jihad

Legitimate weapons

According to Shia jurisprudence the use of indiscriminate weapons (of the time) such as mangonel, fire, flooding, and poisoning is impermissible.⁶⁵⁵ The main reason for this prohibition is the risk to the illegitimate targets' lives.⁶⁵⁶ It seems Iran's Supreme Leader, Ayatollah Khamenei's fatwa on rejection of building, storing, and utilization of atomic weapons is based on this principle of Shia jurisprudence. Cutting trees and killing animals is unaccepted as well.⁶⁵⁷ The reason for impermissibility of these acts is, probably, related to undesirability of using destroying the enemy's property as a weapon. Another reason could be related to excluding these from the battle field because jihad is focused only on the battlefield and these are not coherent parts of the battlefield.⁶⁵⁸

Impermissibility of Night Attack and attack by surprise

Attacking the enemy at night has been disapproved by Shia jurisprudence.⁶⁵⁹

This disapproval might be because this kind of attack is regarded as a kind of

⁶⁵⁵ Shahid Thani, *al-Rawdah al-Bahyyah*, p. 392.

⁶⁵⁶ Tusi, *al-Iqtisad*, p. 4.

لان فيه هلاك من لا يجوز قتله من الصبيان و النساء و المجانين.
الطوسي، الاقتصاد، ص 4.

⁶⁵⁷ Hilli, *Talkhis al-Maram*, p. 204.

⁶⁵⁸ Mortaza Motahari, *Jihad*, pp. 44-5.

Also see: Muhammad Mahdi Shams al-Din, *Fiqh al-'onf al-Mosallah* (the jurisprudence of armed violence).

⁶⁵⁹ Allamah al-Hilli, *Ershad al-Azhan*, p. 193.

و يكره الاغاره ليلا.
العلامة الحلي، الارشاد الاذهان، ص 193.

surprise attack, and also can be considered as an independent issue. If it is the first case, in my opinion, the danger which it can bring to those groups who enjoy immunity including women, children, the aged, the ill, and the clergy, is the reason for its prohibition. The undesirability of attack by surprise is directly derived from the Quranic verse which orders the Prophet to avoid attack by surprise.⁶⁶⁰ The element of surprise is very much a characteristic of terrorism. If attacking the enemy's army by surprise is not permissible, then it is clearly the case that attacking civilians by surprise is doubly undesirable.

The question of targeting human shield

As defined in Shia jurisprudence, a human shield, or *tatarros* (تترس), is the use of civilians by the enemy as a shield so as either to avoid harm to the enemy forces, or to force the Muslim army to submit to the enemy's will. Almost all jurists agree that targeting those groups of the enemy's people who enjoy immunity during war is prohibited. This ruling, arguably, is based on sanctity of human life against the military necessity of winning the war although the reason has not clearly been mentioned. There is no difference between Muslims who have been used by the enemy as human shield and those people of the enemy who are not legitimate targets⁶⁶¹ such as women, children, the aged, the clergy, the insane, the sick, the blind, and the

⁶⁶⁰ If you [have reason to] fear from a people betrayal, throw [the peace treaty] back to them, [putting you] on equal terms. Indeed, Allah does not like traitors. (Q.8:58)

وَإِذَا تَتَرَسَ الْمُشْرِكُونَ بِأَطْفَالِهِمْ بَانَ كَانَ ذَلِكَ حَالِ التَّحَامِ الْقِتَالِ جَازَ رَمِيهِمْ وَلَا يَقْصِدُ الطِّفْلَ بَلْ يَقْصِدُ مَنْ خَلْفَهُ ... وَ إِذَا

تَتَرَسَ الْمُشْرِكُونَ بِأَسَارَى الْمُسْلِمِينَ فَإِنْ لَمْ تَكُنِ الْحَرْبُ قَائِمَةً لَمْ يَجْزِ الرَّمْيُ ...، وَ إِنْ كَانَتْ الْحَرْبُ مَلْتَحِمَةً فَإِنَّ الرَّمْيَ جَائِزٌ، وَ يَقْصِدُ الْمُشْرِكِينَ وَ يَتَوَقَّى الْمُسْلِمِينَ.

الطوسى، المبسوط، ص 80.

incapacitated. Dhimmis, or non-Muslim citizens of the Islamic state, are treated as Muslims when taken as human shield.⁶⁶²

Despite the jurists' unanimous agreement on the prohibition of targeting a human shield, most jurists consider targeting the enemy while there is a risk to the human shield (whether be Muslims or non-Muslims) to be permissible⁶⁶³ although they emphasize the intention must be to target the enemy soldiers, otherwise it is a sin:

*If the enemy uses his own women, children, the insane, the old, and [different categories of] the ill people or Muslims as the human shield, and this might lead to big loss for Muslim army (الضروره) then it is allowed to target the enemy although there might be the risk of non-combatants getting hurt. For the Muslim army it is necessary to do its best to avoid harm (كف عنهم) to former groups when targeting the enemy.*⁶⁶⁴

The conditional permissibility of targeting the enemy when there is a risk for the 'human shield' to be harmed is the main justification provided by executors and supporters of suicide attacks for justifying targeting civilians.⁶⁶⁵

It is interesting that this notion has been employed for the justification of

⁶⁶² Al-Shaikh Tayy al-Ameli, *al-Masael li-Ibn Tayy*, p. 244.

و اما ترس الذمی فحکمه حکم المسلم.

الشیخ ابوالقاسم علی بن علی بن جمالدین محمد بن طی العاملی، المسائل لابن طی، ص 244.

⁶⁶³ Tusi, *al-Mabsut*, p. 80.

⁶⁶⁴ Allamah Hilli, *Talkhis al-Maram*, Selselah, p. 204.

و لا يجوز قتل المجانین و الصبیان و النساء و ان عن، و لو تترسوا كف عنهم الا مع الضروره، و لو كان بالمسلم وجبت كفاره مطلقا و القود ان امکن اعدول، و لا الرهبان فی الصوامع و ما اشبهها من المواضع التي حبسوا انفسهم فيها علی رأى الا ان يكونوا مقاتلين، و لا الاعمی و لا المقعد و لا التمثیل و لا الغدر و لا الغلول.

العلامه الحلی، تلخیص المرام، ص 204.

⁶⁶⁵ Amir Molla Mohammad Ali, *Mabani fihi amalyat esteshhadi* (the jurisprudential bases of self-martyrdom operation, Zama zam الهدایات publications, Qom, 1385 S.H., pp. 153-4.

suicide attacks as well as reasoning that since there is no difference between sanctity of others' lives and one's own life then, if it is allowed to endanger innocents' lives (of human shield), then why one should not be allowed to endanger his own life (as executer of suicide operation)?⁶⁶⁶

To conclude this section, we may say that, while terrorism seeks to spread terror among civilians, the above mentioned limitations in the use of force indicates that, in opposition to terrorism, jihad guarantees the safety of those groups which are the main targets of terrorism. Thus it can be said that terrorism and jihad do not have any of the targets, means, objectives, and also executers in common. In addition to clear contradiction between jihad and suicide terrorism if there is still any doubt about that there is a jurisprudential ruling which addresses such doubt. Based on the "principle of *bara`ah*",⁶⁶⁷ which was discussed in chapter seven, if there is doubt with respect to an act as to whether or not it is a religious duty, it is not a duty until proven so. Accordingly, since suicide terrorism is a new phenomenon, therefore in the case of being unsure if it is religiously approved, as a form of jihad, then the correct position to take is that it is not. The second point is that if suicide tactics are considered to be jihad then, since jihad, as mentioned above, is compulsory at least once a year, all of those who claim to literally believe in suicide terrorism as jurisprudential jihad inevitably must kill themselves in the first year (because it is compulsory at least once a year for them to do jihad). If they be sincere in their claim it means that after only one year all of them will kill themselves and there will be no more of suicide bombers and

⁶⁶⁶ Ibid, pp. 163-8.

⁶⁶⁷ One has no religious duty if there is doubt of having it.

the problem will be solved because no preacher of such terrorism will exist. Arguably, promoters of suicide terrorism flounder in hypocrisy and inconsistency, if they really believe suicide terrorism to be a case of 'jihad' then they must act accordingly which they obviously do not.

Defence (Difa`)

Self-defence, or *difa`* (دفاع), is an unconditional obligation (*wajib a`yni*) for every capable person. Unlike jihad, it is obligatory for women to defend themselves as well.⁶⁶⁸ And again, different from jihad, it does not require government's permission. The objective of self-defence is to stop the threat and self-defence can continue till the aggression is stopped.⁶⁶⁹ The objective of defence must be to defend one's life and property and not to kill the invader, rather only "minimum" harm to the other side, enough for fulfilling the goal of defence, is permitted.⁶⁷⁰

There is a term in Shia jurisprudence which has opened the space for some interpretations that gives more flexibility to the executer than what self-defence requires, namely 'defending the seed of the religion'. The seed of religion is endangered when the enemy's attack is so serious that there is the danger of destruction of the whole Muslim society, or a real threat of being forced to leave Islam.⁶⁷¹ Still, such a defence must be limited to the removal

و يجب الدفع (دفاع عن النفس) على القادر، سواء الذكر و الانثى، و السليم و الاعمى، و المريض و العبد، و غيرهم (اي 668 الذين لا يجب الجهاد عليهم).

الشهيد الثانى، الروضه البهيه، ص 383.

⁶⁶⁹ Tusi, *al-Mabsut*, p. 165.

لا يقصد قتله، بل يقصد دفعهم ... كما يدفع الانسان عن نفسه و ماله.

الطوسى، المبسوط، ص 165.

⁶⁷⁰ Tusi, *al-Mabsut*, pp. 166.

اذا قصد رجل يريد نفسه او ماله او حريمه فله ان يقاتله دفعا عن نفسه باقل ما يمكنه دفعه به.

الطوسى، المبسوط، ص 166.

⁶⁷¹ Shahid al-Awwal, *al-Doroos al-Shar`yyah*, pp. 221-2.

of the threat and not to victory as such over the enemy.⁶⁷² The term ‘defending seed of the religion’, which is also mentioned under category of ‘defence’, focuses on rescuing the society and the religion in distinction to one’s own life and property. Therefore, this possibility can prepare the ground for going further than self-defence *per se*. I will discuss this shortly under ‘exigency’.

As noted above, self-defence or ‘*difa`*’ requires minimum necessary harm to the attacker.⁶⁷³ It is while in terrorism maximum spread of fear among innocent civilians is a key factor. Such a fear is seen as a necessary part of the pressure needed for furthering the group’s political objectives. Since elements of maximum harm (at least psychologically) and political objectives are absent in ‘*difa`*’ and it only applies to actions against attackers, then it differs from terrorism in its targets, means, and goals. Suicide terrorism is even more at odds with *difa`* than jihad. This is because in suicide terrorism one endangers (sacrifices) his own life intentionally in order to harm others, while in *difa`* the defender tries to save his life with the minimum harm to the attacker. Thus, with the exception of the fact that both are practiced by non-state executors, terrorism and ‘*difa`*’ have nothing in common.

Confronting Rebels

Confronting the rebel, or ‘*qital ahl al-baghi`*’ (قتال اهل البغى), is a jurisprudential term which refers to fighting a Muslim group which takes up weapons against

و لا يجوز الجهاد مع الجائر اختيارا الا ان يخاف على البيضة الاسلام و هى اصله و مجتمعه من الاضطلام او يخاف الاضطلام قوم من المسلمين.

الشهيد الاول، الدروس الشرعيه، صص 221-222.

الا ان يدهم المسلمين امر يخاف معه على بيضه الاسلام و يخشى بواره او يخاف على قوم منهم، فانه يجب حينئذ دفاعهم و⁶⁷² يقصد به الدفع عن النفس و الاسلام و المومنين و لا يقصدوا الجهاد ليدخلوا فى الاسلام.

الطوسى، المبسوط، ص 76.

فله ان يقاتله دفعا عن نفسه باقل ما يمكنه دفعه به⁶⁷³

الطوسى، المبسوط، ص 166.

the just ruler (technically, the Immaculate Imam for Shia) to overthrow or disobey him. Rulings of ‘*baghi*’, which literally means “insubordination” or “oppression”, are based on verse 49:9 of the Qur’an and this determines policy toward internal rebellion.⁶⁷⁴ Some of the rulings of ‘confronting the rebel’ are, interestingly, in the rebels’ favour. According to al-Tusi, for example, if the rebelling group is not well equipped and well organized, it should not be fought.⁶⁷⁵ Again, if the rebelling group leaves the battlefield and does not head to another part of their army which is strong and organized, it is forbidden to chase and kill them.⁶⁷⁶ Another interesting point is that if non-Muslims help rebels and fight alongside them they must be treated like Muslim rebels that should not be chased, and their properties should not be seized as well.⁶⁷⁷ The belongings of rebels must be returned to them after the fighting is over.⁶⁷⁸ It is not permissible even to use rebels’ captured weapons,

⁶⁷⁴ And if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. And if it returns, then make settlement between them in justice and act justly. Indeed, Allah loves those who act justly. (9)

وإن طائفتان من المؤمنين اقتتلوا فأصلحوا بينهما فإن بغت إحداهما على الأخرى فقاتلوا التي تبغي حتى تفيء إلى أمر الله فإن فاءت فأصلحوا بينهما بالعدل وأقسطوا إن الله يحب المقسطين (الحجرات: ٩)

⁶⁷⁵ Tusi, *al-Khilaf*, selselah, p. 150-151.

و لا يجب قتال اهل البغى و لا تتعلق بهم احكامهم الا بثلاث شروط: احدهما ان يكونوا فى منعه لا يمكن كفهم و تفريق جمعهم الا بانفاق و تجهيز جيوش و قتال، فاما ان كانوا طائفه قليله و كيدها كيد ضعيف فليسوا باهل البغى.

الطوسى، المبسوط، صص 151-150.

⁶⁷⁶ Tusi, *al-Khilaf*, p. 52.

اذا ولى اهل البغى الى غير فئه او القوا السلاح او قعدوا او رجعوا الى الطاعة حرم قتالهم بلا خلاف.

الطوسى، الخلاف، ص 52.

⁶⁷⁷ Tusi, *al-Khilaf*, pp. 53-4.

Also: Tusi, *al-Mabsout*, p. 159.

اذا قاتل قوم من اهل الذمه مع اهل البغى اهل العدل و لم يعلموا بانه لا يجوز معاونه قوم من المسلمين (فى ذلك) لم يخرجوا بذلك من الذمه.

الطوسى، الخلاف، صص 54-53.

و اما ان قاتلوا (اهل الذمه) عالمين بذلك (عدم جواز) فانه تنتقض ذمتهم عندنا.

الطوسى، الخلاف، ص 159.

⁶⁷⁸ Shahid alAwwal, *al-Luma`h*, p. 408.

و الاصح عدم قسمه اموالهم مطلقا.

الشهيد الاول، للمعه، ص 408.

horses and so on during the fight against them, and these must be returned to them when the war is over.⁶⁷⁹ Such rulings seem to be based on a saying of the Prophet that using anyone's belongings needs his/her permission,⁶⁸⁰ and of course it is assumed that the rebels will not give permission to their enemy to use their weapons against themselves. Another interesting point is that if some of the rebels' belongings are damaged before or after the war, the government should replace the damaged items, but if it happens during the war there will be no compensation.⁶⁸¹

The killed one of rebels, if a just person (i.e., a good believer), should be treated as a martyr with respect to being prayed over and buried with war-clothing, without any need for funerary ablutions. This is because rebels may have a just cause and consider themselves martyrs.⁶⁸² The captured rebels must be freed after the fighting is over even if the rebels' side has killed government soldiers.⁶⁸³ Tusi's reason for this ruling is that you can't retaliate

⁶⁷⁹ Tusi, *al-Khilaf*, selseleh, pp56-7.

لا يجوز لاهل العدل ان يستمتعوا بدواب اهل البغى و لا بسلاحهم و لا يركبونها للقتال، و لا يرموا بنشابهم حال القتال، و لا فى غير حال القتال، و متى حصل من ذلك شىء عندهم كان محفوظا لاربابه، فاذا انقضت الحرب رد عليهم.

الطوسى، الخلاف، صص 56-57.

⁶⁸⁰ Tsui, *al-Mabsut*, p. 152.

المسلم اخ المسلم لا يحل دمه و ماله الا بطيبه من نفسه.

الطوسى، الميسوط، ص 152.

⁶⁸¹ Tusi, *al-Mabsut*, p. 153.

فان كان فى غير حال القتال مثل ان كان قبل الحرب او بعدها فالضمان على من اتلف ذلك، دما كان او مالا.

الطوسى، الميسوط، ص 153.

⁶⁸² Tusi, *al-Khilaf*, pp. 55-56.

Also: Al-Shahid al-Awwal, *al-Dorous al-share`yyah*, p. 231.

اذا كان المقتول فى المعركة (من اهل البغى) من اهل العدل لا يغسل و يصلى عليه. دليلنا: اجماع الفرقه على ان الشهيد لا يغسل و يصلى عليه، و هذا شهيد عندهم.

الطوسى، الخلاف، صص 55-56.

ايضا: و العدل اذا قتل فشهيد اجماعا.

الشهيد الاول، الدروس، ص 231.

⁶⁸³ Tusi, *al-Mabsut*, p. 158.

و ان قتلوا الاسارى لم يقتل اسراهم الن القاتل غيرهم، ثم ينظر فيهم، فان كانت الحرب قائمه لم يطلق الاسارى، فاذا انقضت الحرب اطلقوا رهانهم كما يطلقوا اسيره سواء.

for killing by killing someone other than the actual killer; and in this case since the the captured rebel is not the actual killer then killing him is not considered as legitimate reciprocation.⁶⁸⁴ This reasoning can be used against blind retaliation that Muslim terrorists currently base their attacks against innocent civilians on. While Islamic jurisprudence respect armed rebels how come killing innocent Muslims in markets, places of worship, hospitals and schools in the name of perceived wrong deeds of unknown individuals can be justified?

There are seven conditions that govern legitimate fighting against rebels:

- 1- That there is no other way to stop them but by fighting back. However, if they constitute a weak small group which does not cause a real threat, or which could be managed without fighting, then it is not permissible to use force against them.⁶⁸⁵
- 2- That the rebel withdraws from the community so that there is no information about their destructive activities. As long as they act publicly and not secretly, despite being suspected of engaging in anti-government activities, force shouldn't be used against them unless and until they rebel in an armed way.⁶⁸⁶ This ruling is based on Imam Ali's policy toward rebels that did not prevent them from using the mosques, did not cut their social benefits, and did not start fighting them until

الطوسي، المبسوط، ص 158.

⁶⁸⁴ Ibid.

⁶⁸⁵ Shahid al-Awwal, *al-Doroos al-Shary`yah*, p. 231.

كونهم في منعه لا يمكن تفريقهم الا بالجيش.

الشهيد الاول، الدروس الشرعية، ص 231.

⁶⁸⁶ Tusi, *al-Mabsut*, p. 151.

ان يخرجوا عن قبضه الامام منفردين عنه في بلد او باديف، فاما ان كانوا معه و في قبضته فليسوا اهل البغي.

الطوسي، المبسوط، ص 151.

they started the war. Eventhough Imam Ali was aware of their activities in advance he did not use force against them until they attacked the government's army.⁶⁸⁷

- 3- That the rebel group consider themselves right, otherwise they would be treated as *muharibun* which will be discussed shortly.⁶⁸⁸
- 4- That they have appointed a leader for themselves which means they have a plan of overthrowing the just Imam and replacing him with their own leader. However, it should be noted that some jurists do not consider this as a requirement.⁶⁸⁹
- 5- There must be a public debate between the government's representatives and the rebels' representatives, held in such a way that the public witnesses who is wrong and so who should be blamed for the consequences.⁶⁹⁰
- 6- The goal of fighting must be to contain the rebellion by confronting the rebels and putting them to flight, dispersing their supporters, and weakening their position. Killing the rebels must not be the intention.⁶⁹¹

⁶⁸⁷ Ibid, p. 151.

فقال على عليه السلام: ... لكم (اهل البغى) علينا ثلاث: ان لا تمنعكم مساجد الله ان تذكروا فيها اسم الله، و لا تمنعكم الفىء ما دامت ايديكم معنا، و لا نبذكم بقتال.

الطوسى، المبسوط، ص 151.

⁶⁸⁸ Ibid, p. 151.

ان يكونوا على الميانه بتاويل صانع عندهم.

⁶⁸⁹ Tusit, *al-Mabsout*, p. 151.

نصب الامام شرط.

⁶⁹⁰ Ibid, p. 151.

لم يحل قتالهم حتى يبعث الامام من يناظرهم و يذكر لهم ما ينقمون منه، فان كان حقا بذله لهم، و ان كان لهم شبهه حلها، فاذا عرفهم ذالك فان رجعوا فذاك و ات لم يرجعوا اليه قاتلهم.

الطوسى، المبسوط، ص 151.

⁶⁹¹ Tusi, *al-Mabsout*, p.165.

لا يقصد قتله (اهل البغى)، بل يقصد دفعهم و تقليل حدهم و تفريق جمعهم.

الطوسى، المبسوط، ص 164.

7- The fighting should be continued only until the rebels are dispersed and not until the whole insurgence is defeated.⁶⁹² This is why killing the escaping rebels is forbidden.⁶⁹³

The main point that can be said about the relation of ‘the principle of confronting rebels’ and ‘terrorism’ is that this principle limits violence even against an armed and threatening group let alone justifying harming innocent civilians while terrorism is essentially based on harming innocent civilians. ‘Confrontation of rebellion’ and ‘terrorism’ differ in identity of executers, targets, and means and might only be considered to have political objectives in common. Rebels do not target civilians and as soon as they do all their privileges are removed because they will be treated as *muharibun* and nor *al-bughat* any more. In translating from the original texts I use the word ‘confront’ instead of ‘fight’ to show the nature of this principle more accurately. Still, the word ‘fight’ could be used, and is used, in some occasions for this kind of armed conflict which is not wrong.

While killing even Muslim armed rebels is not to be intended in an armed conflict, nowadays around 97 percent of all casualties of suicide terrorist attack executed by Muslim militants are Muslims.⁶⁹⁴

Fighting the fear mongers or *muharibun*

Hirabah (حرايه) literally means taking wealth by force. In Shia jurisprudence *hirabah* or *muharibah* is used to name the act of use of arms by a group of

⁶⁹² Ibid, p. 164. .

⁶⁹³ Ibid, p. 157.

لا يتبع مدبرهم.

الطوسي، المبسوط، 157.

⁶⁹⁴ The US department of state 2011 annual report on terrorism.

Muslims to terrorize their civilian victims for robbery, sexual assault and so on. Most jurists mention terrorizing, *irhab* (ارهاب)⁶⁹⁵ or *ikhafah* (اخافه), as the inherent characteristic of this kind of crime.⁶⁹⁶ Such jurists emphasize on the element of spreading terror among the victims as a principal intention behind this crime which makes it quite similar to ‘terrorism’.

Shia jurisprudence rulings toward *muharibah* are exceptionally harsh. Unlike other legitimate forms of the use of force, in fighting *muharibun* (sing. *muharib* (المحارب)), even a woman engaging in *muharibah* may be killed.⁶⁹⁷ It is while in no other case does Shia jurisprudence allow fighting women with the intention of killing them. Again unlike fighting rebels, fearmongers (*muharibun*), who are also called highway robbers by some jurists, are fought to be killed and should be chased and killed even if they escape from the combat. If they get captured before they repent, depending on what kind of crime they have committed and whether they have killed their victim, have robbed or merely terrorized the victim, they might be sentenced to execution and gibbeting for a combination of all, having their right hand and left foot amputated if the victim was robbed and terrorized but not killed, and must be sent to exile if they have merely terrorized the victim.⁶⁹⁸ Unlike other crimes against citizens, the victim or his family cannot waive the punishments because it is an act against the society.⁶⁹⁹ If *muharibun* repent and surrender

⁶⁹⁵ The same word used in modern Arabic for terrorism.

⁶⁹⁶ Shahid al-Awwal, *al-Dorous*, p. 238

و هو من جرد السلاح لآخافه في مصر او غيره.
الشهيد الاول، الدروس الشرعيه، ص 238.

⁶⁹⁷ Ibid.

و ان كان امراه

الدروس، ص 238

⁶⁹⁸ Ibid., p. 239.

⁶⁹⁹ Al-Shahid al-Awwal, *al-Dorous*, p. 239.

themselves before they get captured then those punishments related to violating the society's right could be dropped, but they still need to content their victim for his personal rights, otherwise the victim or his heirs can ask for 'qisas' (talion/retaliation).⁷⁰⁰ Since punishment is a matter of 'hudud' and not 'jihad', or fighting, we will not go further here with *qisas*.

According to Shia jurisprudence, rules of engagement with *muharibun* are the harshest, and even much harsher than treatment of invading unbelievers. For deducing punishments for *muharibah* Shia jurists refer to verses 5:33 and 5:34 of the Quran.

Muharibah is the closest term in Shia jurisprudence to the present day concept of terrorism. Since *muharibah* is strongly opposed in Shia jurisprudence, regulations concerning the confrontation of *muharibah* might have the potential to provide some bases for a counterterrorism approach using Shia Islamic laws. Shia jurisprudence has allocated the severest punishments for *muharibah* and if the relation between *muharibah* and terrorism is formulated properly then it can act as an effective element for disarming Muslim extremists' acts of terrorism which claim their actions as religiously justified while can easily be branded as 'fearmongering' or *muharibah*.

However, as noted above, while the Shia jurisprudence book of jihad has a section on fighting terrorism (*muharibah*) it doesn't allow fighting women and children even though they fight Muslim army in an armed conflict. Then if someone decides to investigate terrorism in Shia jurisprudence he will find

فان عفا عنه قتل حدا.

الشهيد الاول، الدروس، ص 239.

⁷⁰⁰ Ibid. Pp. 239-240

و لو تاب قيل القدره عليه سقط حق الله تعالى خاصه، و لو تاب بعد القدره لم يسقط شيء.

الشهيد الاول، الدروس، صص 240-239.

a section against terrorism while, as we witnessed, it will be difficult for him to find anything in favour of it (at least up to now and regarding topics covered here).

Guarding borders and related fighting

Ribat or *murabitah* (مرابطه), which means patrolling and safeguarding the Islamic state borders, is highly recommended by Shia jurisprudence although it is not a religious obligation. It is so favourable that if done for more than 40 days it has the same reward of jihad.⁷⁰¹ Some have included *ribat* in defence and some in jihad and others like Tusi have mentioned it separately. *Murabitah* is the only premised contribution of Shias in military activities of a temporal (or non-Immaculate) ruler.⁷⁰² *Murabitah* under a non-Immaculate Imam's rule is permissible in the case that does not include any fighting. Fighting during *murabitah* is not allowed except if the person's life is endangered.⁷⁰³ If the guard is injured or loses his belongings whilst serving in a non-Imam's government he will not be rewarded (in the hereafter) for that, although defending himself is a religious duty upon him at any circumstances nevertheless.⁷⁰⁴

⁷⁰¹ Tusi, *al-Mabsout*, p. 77.

و حدها (المرابطه) ثلاثه ايام الى اربعين يوما، فان زاد على ذلك كان جهادا.
الطوسي، المبسوط، ص 77.

⁷⁰² Allamah Hilli, *Talkhis al-Maram*, Selseleh, p. 204.

و يستحب المرابطه و ان غاب الامام.
العلامه احلي، تلخيص المرام، ص 204.

⁷⁰³ Tusi, *al-Mabsout*, p. 77.

غير انه لا يجاهد العدو الا على ما قلناه من الدفاع عن النفس و الاسلام.
الطوسي، المبسوط، ص 77.

⁷⁰⁴ Ibid.

Murabitah does not fit terrorism because it must be done through the just government, if includes any fighting. Other than that, and as its name shows, *murabitah* is not an offensive tactic but rather a passive one. In addition to the difference in executers and means, *murabitah* and terrorism do not have common targets and objectives either.

Physical Forbidding of evil as an armed conflict

Muslims are duty-bound to be guardians of virtue and goodness, and to combat evils and wrongs among themselves. The guarding of virtue and goodness is named ‘calling for good’, or *amr bil-m'aruf* (الامر بالمعروف) and the combating of evil is called ‘Forbidding of evil’ or *nahi anil-munkar*, (النهي عن المنكر) and they (both together) form one of the ten worship-acts, or God’s rights, according to Shia jurisprudence. *Amr beil-Ma`ruf* and *nahi anil-munkar* has three forms: by the heart, by the tongue, and by the hand. It is compulsory for all Muslims to be happy with good and unhappy with evil in their heart, but for the other two certain conditions apply. For *amr bil-ma`ruf* and *nahi anil-munkar* with the tongue, there are three requirements: 1- It is necessary that the executer has the full knowledge of the good and evil himself/herself. 2- The executer must be able to assess if conditions are prepared for an efficient *amr bil-ma`ruf* and *nahi anil-munkar*. Without assurance of efficiency this principle is not obligatory (nor even permissible). 3- The executer is to be safe from the consequences of *amr bil-ma`ruf* and *nahi anil-munkar* which means that no harm endangers his/her safety and property because of executing this ‘worship-act’.⁷⁰⁵

⁷⁰⁵ Al-Allamah al-Hilli, *al-Risalah al-fakhryyah*, p. 216.

و يجب بالقلب ثم باللسان ثم باليد. و شرطه انتفاء الضرر و تجويز التاثير و العلم بالمعروف و نهى عن المنكر.

Amr bil-ma`ruf and *nahi anil-munkar* by hand or physical ‘Calling for good and forbidding of evil’ is the final form or stage which might require the use of force in its extreme form. This needs all the requirements of *amr bil-ma`ruf* and *nahi anil-munkar* by tongue and again has two extra requirements. The exclusive requirements of *amr bil-ma`ruf* and *nahi anil-munkar* by hand are: 1- only negative part of ‘forbidding of evil’ can include physical deterring, and 2- that if there be any possibility of causing any injury or harm to the one who is forbidden it is to be done exclusively through the appropriate government authority.⁷⁰⁶

Few jurists have mentioned the ‘physical forbidding of evil’ or *nahi anil-munkar bel-yad* (النهي عن المنكر باليد) in the Book of Jihad when it requires the use of force. The most famous jurist who has mentioned this stage of *nahi anil-munkar bil-yad* in the Book of Jihad is Allamah Hilli.⁷⁰⁷ Unlike Hilli and the few other jurists such as Shahid Thani, who followed him, the majority of jurists mention the final stage of *amr bil-ma`ruf* and *nahi anil-munkar* in the Book of *hudoud* or punishments. Whether the physical stage of *amr bil-ma`ruf* and *nahi anil-munkar* is mentioned in the Book of Jihad or not, there are four characteristics of this principle that disqualify it for being used for terrorism: 1- If it is only among Muslims and against the wrong-doers then non-Muslims and all innocent Muslims cannot be targeted. 2- It must be done through the government and therefore sub-national groups are not qualified

العلامة الحلبي، الرسالة الفخرية، ص 216.

⁷⁰⁶ Al-Hassan Ibn Yousof famous as Allamah Hilli, *Tabserah al-Mutia`limin*, no publisher, no date, pp. 83-4.

و ان يفتقر الى الجراح لم يفعله الا باذن الامام.

العلامة الحلبي، تبصره المتعلمين، ص 83.

⁷⁰⁷ Allamah Hilli, *Tabserah al-Mutia`limin*, p. 83.

to execute it. 3- The spread of terror is not among objectives of this principle.

4- It lacks direct political objectives, although indirect political objectives might be supposed for many of religious activities in general.

Bypassing jurisprudence: exigency and temporary suspension of jurisprudence

As discussed above, none of the six cases of religiously legitimate use of armed force in Shia jurisprudence share the least common elements with terrorism in general and suicide terrorism in particular. Not only is it the case that jurisprudential principles regarding use of armed force do not support suicide terrorism, but also there are some elements in these principles which can be used to confront suicide terrorism as executed by Muslims. The question is that why, despite the clear inconsistencies between concepts of ‘jihad’ and ‘suicide terrorism’, still Muslim militants justify their acts of terrorism. The reality is that since it is quite difficult for Muslim terrorists to justify their actions by jihad as a jurisprudential concept -with all the above mentioned restrictions and limitations- what they do is that they use some techniques to bypass jurisprudence in a way that their actions are not seen as against jurisprudence. As will be discussed below, ‘exigency’ is the main medium in this regard. ‘Exigency’ clearly means a suspension of fiqh until the precipitating situation has changed and as such is against jurisprudence. Regarding importance of ‘exigency’ it is to say that the permission that some jurists have given for suspension of fiqh in some specific contexts understood as ‘exigential situations’ might be claimed as Shia jurisprudence’s support for suicide attacks, but arguably with a deeper examination as presented here such a claim would be disqualified. The

bottom line is that ‘suicide terrorism begins where jurisprudence (as regulator of actions) ends’ even if the permission for that is given by jurisprudents themselves because it cannot be but permission for suspension of fiqh. Lodging a set of rules which regulate the believers’ conduct, especially during stressful events such as time of conflict, is the main purpose of jurisprudence. It is while terms such as ‘exigency’ are post-jurisprudential and give executor the freedom to act as he wants or at least as he perceives to be right. ‘Exigency’, by opening hands of executors, constitute violation of the main goal of jurisprudence which is controlling humans conduct. The mere use of juridical language should not mislead us to conclude that terrorism is approved by Islam as a religion. Today even committed Baathists, who are ideologically against religion, also call themselves ‘mujahid’ and their organization in Iraq as “general Command of the Mujahidin of the Armed Forces”.⁷⁰⁸ This mess is partially because jurisprudential terms are used so loosely that everyone use them at his own will which indicates significance of adequate studies for crystallization of these terms. Previously I tried to investigate ‘Martyrdom’, ‘Retaliation’ and ‘Jihad’ and now will try to do the same in regard with ‘Exigency’.

Shia jurisprudents’ fatwas validating ‘suicide operations’ are based on the ‘rule of exigency’ or *darura*. ‘Rule of exigency’ is a term derived from a maxim of *usul al fiqh* (principles of jurisprudence) which allows suspension of jurisprudential rulings. The rule of exigency indicates that “necessity makes the unlawful lawful” (al-darurat tubihu al-mazurat).⁷⁰⁹ The legal

⁷⁰⁸ John David Payne, Donna Lee Bowen and Joseph Woolstenhulme, “How Religious is Islamic Religious Terrorism?” In Ward and Sherlock (eds.), *Religion and terrorism*, 2014, p. 139.

⁷⁰⁹ Kamali, *Shari‘ah Law*, p. 285.

maxim of ‘necessity’ is usually used in favour of the interests of believers, meaning that when the special conditions make the consequences of acting in accordance with religion so onerous, the believer’s obligation is suspended until conditions return to normal, or at least to a more tolerable state. For example, eating pork is strictly forbidden by Shia jurisprudence, but will be permitted if one’s life is endangered by starvation. Here the first ruling of prohibition is called ‘*hukm awwalyyah*’ – the primary or the main ruling – and the enabling ruling in conditions of extreme hunger is called the ‘*hukm sanawyyah*’ – the secondary or subsidiary ruling. The Primary Jurisprudential ruling is suspended until the exigent circumstances pass. The example of where eating pork is permissible to avoid starvation only applies to the extent that the urgent danger is overcome. The believer may not eat more than what is deemed necessary to preserve his life.

Danger to the seed of the religion and concept of exigency

The jurisprudential principle of exigency has been employed in some cases to justify abnormal actions such as suicide tactics.⁷¹⁰ The complementary term which is used as *darura* to justify norm-breaching actions of suicide tactics is that the ‘seed of the religion is in existential danger’ and it requires urgent reaction to repulse the threat in any way possible. The ‘seed of religion’ is supposed to be in danger when the enemy’s attack is so serious that there is the danger of destruction of a Muslim community in its entirety, or that the community is faced with being forced to renounce Islam.⁷¹¹ Supporters of suicide tactics hold the view that such a tactic is an irreplaceable tool that may

⁷¹⁰ Amir Molla-Mohammad-Ali, *Mabani fiqhi amaliyat istishhadi* (Jurisprudential bases of martyrdom operations), Zamzam-e hedayat, 1385/2006, p. 135.

⁷¹¹ Shahid al-Awwal, *al-Doroos al-Shar`yyah*, pp. 221-2.

be used to achieve their defensive end of protecting the ‘seed of the religion’.

The analogy is drawn from the same principle which allows eating pork in the case of potentially fatal hunger, namely *darurah* or exigency (see the fatwa on permissibility of suicide tactics in the footnote).⁷¹² Despite general agreement the term ‘exigency’ is deceptively simple, and there is not unanimous agreement among Shia jurists about characteristics of a state of exigency in which the ‘seed of the religion’ can be considered imperilled.

There is one case that may be cited in which a small but still notable number of Shia jurists considered it to be a situation in which the seed of the religion was endangered. The 1982 Israeli invasion of Lebanon and the foreign intervention in favour of the pro-Israeli Maronite Christian ruling party of Lebanon was considered to be a threat so existential that it imperilled the seed of the religion in the eyes of a small number of Lebanese Shia *ulama*.⁷¹³ As we see, despite numerous cases of armed conflicts in the Islamic world, only this single case found some level of agreement regarding being a ‘threat to the seed of religion’, although the number of supporters of such notion among Shia *ulama* still remained far from being the majority and the vast majority of Shia *ulama* chose silence toward it. When majority of Shia *ulama* refused to consider Israeli’s occupation of Lebanon as ‘a threat to the seed of religion’

⁷¹² Fatwa of Ayatollah al-Udma Duzduzani on suicide tactics: if the suicide tactic is used for religiously approved necessity although it is not permissible primarily (as *hukm awaliyya*) but can become permissible as secondary ruling for defending the “seed of the religion”.

Quoted in: Amir Molla Mohammad Ali, *Mabani Fiqhi Amaliyat Istishhadi* (Jurisprudential bases of self-martyrdom operation), Zamzam Hedayat Publications, 1385/2006, p. 254.

فتوای آیت الله العظمی دوزدوزانی در مورد عملیات استشهدادی:

عملیات استشهدادی که برای اغراض شرعی انجام می شود بحکم اولی جایز نیست و بعنوان ثانوی و دفاع از بیضه اسلام جایز می شود.

منعکس شده در: امیر ملا محمد علی، مبانی فقهی عملیات استشهدادی، انتشارات زمزم هدایت، 1385، ص 254.

⁷¹³ See: Hizbullah Official Website, 11-11-2007

(<http://www.english.moqawama.org/essaydetailsf.php?eid=653&fid=11>)

labelling smaller cases as such is even more unacceptable. Despite all clashes between the West and the Islamic world, no major Muslim authority has ever considered the West (or imperialism in general) as a threat to the seed of religion. It is because the West's policies, despite all their bitterness, do not include ethnic cleansing of the whole Muslim population of the world or forcing them to convert. Anything less than these two cannot be interpreted as a 'danger to the seed of religion' which is instrumental for justification of 'exigency'.

Shia militants' version of suicide attacks: an indispensable breach of the rules

In Shia Islam, religious arguments against suicide attacks are so strong and numerous that a religious person is not able to ignore them even if conditions become so desperate that mounting a suicide attack could transform the tactical situation favourably to stop the existential threat. Shia militant groups that have used or supported the use of suicide tactics have tried to overcome the intractable religious problem – the contradiction between tactical expediency and religious teachings – by applying the principle of exigency. Although, as a principal ruling (*'hukm awwaliyya*), suicide tactics are forbidden, the argument is simply put that such actions are indispensable if they hold out the prospect of turning the tide of the conflict in favour of the Muslims. Thus this condition temporarily turns an otherwise forbidden tactic into a permissible act, and one which would be spiritually rewarded. Accordingly, and despite the fact that there is no support for suicide attacks as such among mainstream Shia religious scholars, the few who support such actions conditionalize it with respect to very specific situations. Thus they

believe that if certain contingent conditions are met, then the prohibition for suicide attacks will be temporarily removed through the application of the secondary ruling, or *hukm thanawiyya*.⁷¹⁴ At least seven conditions have been indicated as necessary for such temporary jurisprudential consent to be extended. These can be enumerated as follows:

- 1- A Muslim majority country is being attacked by non-Muslim forces from outside.
- 2- The attack endangers the Islamic community existentially so that the seed, or '*baydah*', of Islam is endangered.
- 3- There is no other way of repulsing the attack.
- 4- The operation is done on the battlefield.
- 5- Non-combatants are not hurt.
- 6- It is done for defence and not to defeat the enemy, and therefore should cease as soon as the enemy's attack has been terminated.
- 7- And last, it does not promote a negative image of Islam and Muslims.⁷¹⁵

Some supporters of suicide tactics cite fewer conditions. For example Molla Mohammad Ali, author of the book *Jurisprudential bases of martyrdom operations*, mentions only three conditions, namely;⁷¹⁶

⁷¹⁴ See: Fatwa of Moosawi Ardabili, Fatwa of Ayatollah Yadollah Doozdoozani and Fatwa of Qorban-Ali Mohaqiq Kabuli.

⁷¹⁵ See: The interview with Allamah Fadlollah by Mohammad Javad Akbarain.

See also: *US Army Handbook on Suicide Bombing*.

⁷¹⁶

- 1- دفاع از اسلام و مسلمین متوقف بر آن باشد
 - 2- با اجازه حاکم شرع انجام شود
 - 3- افراد بی گناه کشته نشوند
- امیر ملا محمد علی، مبانی فقهی عملیات استشهادی، زمزم هدایت، 1385، صص 92-93.

- 1- It is the only means to stop the existential threat against Islam and Muslim society.
- 2- It is approved by the just ruler.
- 3- It does not harm non-combatants.⁷¹⁷

The above illustrates that even for those Shia religious scholars who extend hypothetical support for suicide tactics in some exigential circumstances, and are considered by average Shiites to be radical; the carrying out of suicide attacks is not in any way a religious obligation but is ‘a temporary removal of their prohibition under circumstances of exigency’. This is justified as an irreplaceable means necessary in some rare circumstances which then could lead to a temporary suspension and breach of the main religious ruling that otherwise prohibits the act, for the execution of it involves unavoidably two obvious sins – murder and suicide. As the *U.S. Army Handbook on Suicide Bombing* indicates, it was such religious limitations which forced the Lebanese Shia militant groups – the innovators of suicide tactics – to call a halt to their suicide attacks in 1986, four years after they were introduced as an effective tactic. Lebanese Shia groups carried out their first suicide attack on November 11, 1982 against an eight-story building in Tyre city in southern Lebanon, where the Israeli military headquarters was located. The operation killed 141 members of the Israeli Defence Force (IDF), along with a number of Arabs from among Israel’s allies in the Southern Lebanon Christian Militia and also some detainees.⁷¹⁸ It was the greatest loss of life in a single day for

⁷¹⁷ Molla Mohammad Ali, *Mabani fiqhi amaliyat esteshhadi*, pp. 92-94.

⁷¹⁸ Craig S. Karpel, “Suicide Superpower: Martyrdom as a Weapon of Mass Destruction”, Tuesday, October 31, 2006. Accessible via: <http://shilohmusings.blogspot.co.nz/2006/10/suicide-superpower-martyrdom-as-weapon.html>

the IDF.⁷¹⁹ The operation was executed by Ahmad Jaafar Qasir a young Shia militiaman who drove his private white Peugeot pickup truck, filled with different kinds of explosive materials, into the building.⁷²⁰ The Israeli army announced the incident was a result of an explosion of gas cylinders and did not release details of the casualties. The second suicide operation against Israeli military bases took place one year later. Israeli security forces reported the incident as follows:

On November 4, 1983, at 6:00 in the morning, a booby-trapped car laden with six hundred kilograms of explosives entered a military compound in the Tyre district in Lebanon, which served the ISA and the Border Police. The car was driven by members of the Islamic Jihad and the Lebanese Resistance Front. Twenty-eight members of the security forces were killed in the explosion, including 16 soldiers from the Border Police, three ISA employees, and nine IDF soldiers. 31 Lebanese detainees were killed. Twenty-three people were wounded.⁷²¹

Second major attack against the Israeli armed forces was part of a series of further operations. The success of the initial attacks encouraged the Lebanese militant groups to continue employing the tactic, which led to one of the worst attacks against the U.S. military forces since World War II. Overall, six suicide attacks took place between April and December 1983, including attacks against the U.S. and French military bases in Beirut, resulting in the withdrawal of Western military forces from Lebanon. The success of previous

⁷¹⁹ Molla Mohammad Ali, *Mabani Fiqhi Amaliat Istishhadi*, pp. 63-4.

⁷²⁰ Ibid, pp. 47-8.

Martin Kramer, "Sacrifice and 'Self-Martyrdom' in Shi'ite Lebanon.", accessible via: <http://www.webcitation.org/query?url=http://www.geocities.com/martinkramerorg/Sacrifice.htm&date=2009-10-26+02:20:23>

⁷²¹ (<http://www.shabak.gov.il/English/History/time-line/Pages/6days-oslo.aspx>)

attacks led to six more suicide attacks against Israeli targets, between November 1983 and April 1985, designed to force Israel to withdraw its army from southern Lebanon. They were partially successful. However, despite the fact that the Israeli Army then decreased its presence and consequently its threat to the Lebanese Shi'a community, another 16 suicide operations were carried out between June 1985 and June 1986 against Israeli military forces. These achieved little and brought no change to the strategic balance. Henceforth, Lebanese Shia groups abandoned their suicide attacks.⁷²²

Although since 1986 Shias have been attacked in many countries including Pakistan, Afghanistan, Bahrain, Yemen, Saudi Arabia, Iraq, Syria, and Lebanon, and in majority of these countries they have been constant targets of suicide attacks, they have not resumed carrying out suicide attacks. This may be because in Shia Islam, unlike in Sunni Islam, there is a strict religious hierarchy, which although it might at times resist progressive innovations and reform, at the same time it can act more in concert to prevent destructive norm-breaking innovations in the communities it serves. In Shia Islam, those without high ranking religious positions cannot talk influentially in the name of the religion, which makes introducing radical norm-challenging changes difficult. The development of suicide tactics among Lebanese Shiites in the 1980s and the subsequent expression of dissatisfaction or a silent boycott of those tactics by high ranking Shia *ulama* led to the eventual cessation of those attacks.⁷²³ It may be an indication of the influence and success of the Shia religious hierarchy in combating such norm-breaking innovations.

⁷²² US Army Training and Doctrine Command, *Handbook No. 1.03 on Suicide Bombing*.

⁷²³ *Ibid.*

There is a significant difference between ‘exigency’ and ‘retaliation’. When ‘exigency’ requires ‘immediate action’ ‘retaliation’ can take ages. A very clear instance is the case of 1982 invasion of Lebanon by Israel. We know that both inspirational suicide operations of 1983 against the US and France barrack buildings in Beirut by Shias and 9/11 attacks by Sunnis were a reaction to that invasion. When connection between the 1983 suicide attacks against US and France barrack buildings in Beirut to that incident is self evident the relation between 9/11 incidents and 1980s developments needs supporting evidence. If it was not for the clear announcement of Usama Bin Laden such a connection would seem irrelevant:

God knows it did not cross our minds to attack the Towers, but after the situation became unbearable—and we witnessed the injustice and tyranny of the American-Israeli alliance against our people in Palestine and Lebanon—I thought about it. And the events that affected me directly were that of 1982 and the events that followed—when America allowed the Israelis to invade Lebanon, helped by the U.S. Sixth Fleet. As I watched the destroyed towers in Lebanon, it occurred to me to punish the unjust the same way: to destroy towers in America so it could taste some of what we are tasting ...⁷²⁴

Shia militants were able to convince a small minority of Shia ulama that Israel’s 1982 invasion of Lebanon was an existential threat for Shias and as

⁷²⁴ Osama Bin Laden, “God knows it did not cross our minds to attack the towers”, The Guardian London, October 30, 2004. Retrieved May 25, 2010: accessible via <http://www.guardian.co.uk/world/2004/oct/30/alqaida.september11>

such a 'threat to the seed of religion'. Israeli army forcing Shias out of their homes in the south Lebanon and pushing them up north was perceived as a literal cleansing of the land from Shias. Massacre of the Shia neighbourhood of Sabra by Israeli backed Christian militia was another significant evident for such an ethnic cleansing. These incidents, in addition to what happened to Palestinians a few decades earlier, helped Shia militants to sell the situation as a Judeo-Christian plot of christianizing Lebanon by cleansing the country from Muslims and particularly Shias as the most vulnerable ethno-religious group. Despite their initial success in selling the situation as the 'threat to the seed of religion' to few Shia ulema the majority of Shia ulema refused such a quest by Shia militants of Lebanon.

Conclusion

'Exigency' implies the suspension of standard jurisprudential rulings, at least temporarily. Therefore, it is beyond the core competence of *fiqh* by its very nature, even if such conditions are addressed hypothetically by jurists. Thus, jurisprudence cannot be adduced directly to support justifications for suicide attacks. Rather it is the jurists' very occasional granting of permission for its suspension in extreme circumstances that is cited by radicals. Scott Appleby characterised the role of Shia *Ulama* in the promotion and containment of suicide attacks during Lebanon war quite trenchantly:

Submission to Islamic law freed Hizbullah's guerrillas from other types of moral constrains explaining their actions as a Jihad, launched by the oppressed against the oppressors. Jihad had its own requirements, however. Islamic law is open to interpretation, Kramer comments, but it is not infinitely elastic. [Thus] the religious scholars subjected Hizbullah's selection of targets and techniques to such criteria. In doing

so, they forced Hizbullah to resist the temptation to deteriorate into one more sectarian Lebanese militia devoted to battling other sectarian militias.⁷²⁵

Suicide tactics used in the context of exigency are considered to be an inevitable evil with no religious legal value and therefore cannot be commanded, as such, by religion. If this is so, then religion should be criticised for staying silent and doing nothing to stop such incidents, and not, as such, for playing a role in ordering/causing them. Some scholars claim that the apparent silence, or occasional connivance, in situations of exigency is not exclusive to religion and they suggest that it can even be expanded to moral stands as well. Such scholars believe that committing a minor evil to avoid a greater one, when there is no third way to stop the greater evil, mitigates the moral responsibility of the doer.⁷²⁶ Although such a position might not be considered as offering moral support for violence, the fact is that it can serve violence indirectly by not demoralising such actions. It seems that the stand of jurisprudence in opposing terrorism unconditionally gives it a better position in this regard. While legal rulings are supposed to be evaluated by moral ones it seems that in this case jurisprudential rulings are ahead of the moral standpoints of some scholars.

⁷²⁵ R. Scott Appleby, *The ambivalence of the sacred; Religion, Violence, and Reconciliation*, Rowman & Littlefield Publishers, 2000, p.99.

⁷²⁶ Abulqasem Fanaei, "Naqsh-e din dar khoshounat (role of religion in violence).", Accessible via: <http://neeloofar.org/abolghasemfanaei/darsgoftar/172-naghshe-din-dar-khoshonat/623-naghshe-din-dar-khoshonat-1.html>

Chapter Eleven

Conclusion

Although the focus on religious ideology, as undertaken by violent extremists, plays an important role in today's religious extremism, this challenge should not lead to overlooking the deeper causes of extremism such as political suppression, poverty, injustice, foreign intervention and internal corruption. As for the public support for extremism in the Islamic world, according to the result of a Gallup Poll study between 2001 and 2007, undertaken in several Muslim majority countries, those who condemn violence against civilians [i.e., terrorism] refer directly to the Islamic teachings including Quranic verses, whilst those Muslims who support such violence without exception (at least in that specific survey) refer to political issues including foreign intervention in Muslim lands.⁷²⁷ The fact is that impudent foreign intervention, as well as the crippling internal corruption and the perceived 'backwardness' of much of the Islamic world has not attracted only the attention of religious zealots. A wide range of activists, from staunch leftists to devout westernizers, all shared the idea that such a devastating situation could not continue. Of course, the proposed ways out of this situation differed from one group to another. There were three main approaches among Muslims as how to respond to this situation: 'Alliance with other Sufferers', 'Westernization', and 'Return to the Self'. Interestingly, the first and the most popular one was 'adoption of western civilization' although in practice this approach did not bring anything other than 'suppressing despotism (in the name of secularism)' together with 'unyielding

⁷²⁷ See: John L. Esposito and Dalia Mogahed, *Who Speaks For Islam?* Gallup Press, 2008.

corruption' internally and 'derogatory dependency' externally. 'Alliance with other Sufferers' did not fare better and although it was manifested through the 'non-alliance movement' in practice it ended up producing a 'dependency on communism', as the other imperialist block. The 'Return to the Self' movement, suffered deeply from a lack of unity among the advocates of this approach. This, to a great extent, was due to disparity of understandings of the 'true self' and the 'ideal past' among sympathizers of this approach.

The socio-politico-cultural roots of the current civilizational frustration facing Muslims, especially in the Iranian context, and the violence that such frustration can cause, does nothing to explain the religious, and more specifically, the jurisprudential language that agents of the current era of violent extremism are using – not only to justify but also to promote their acts. It has been the aim of this thesis to examine the reasons for the popularity of the Islamic juridical language among violent extremists and the jurisprudential justification for the worst kind of current violence, namely suicide terrorism.

To find the roots for the current widespread prevalence of Shi'a Islamic juridical language among Muslim violent extremists, including agents of suicide terrorism, we needed to dig deep into recent history and locate the precise foundations where these extremists can and/or may base their claims. While a number of revivalist movements were searching out their 'ideal past' in respect to a pre-Islamic identity, Islamic movements were engaged in an endless dispute over an ideal past, which was not limited to the Shia-Sunni and other inter-dominational disputes. Perhaps this was the reason why Islamic religious movements gained public attention and support later than other, non-religious, movements. This said it could be argued that if such other movements had been relatively successful in pulling people out of the

misery of backwardness, corruption, poverty, foreign intervention and internal despotism, religious movements would never have gained the chance to attract public attention, as was indeed the case for a very long time.

It is not difficult to surmise that when Western powers were plotting against national-secular movements in the Muslim countries to ensure they failed, and in the most humiliating way, as they did with Mosadeq of Iran for example, they had no idea as to how challenging the alternative could be. Thus the 1979 Islamic revolution in Iran, which was the pioneer for the rise of Islamism in the whole Muslim world, was supported by Iranians only because all the non-religious efforts had failed miserably as result of the sabotage of them undertaken by foreign powers (specifically the UK and US).

When pointing to the role of Islam regarding the current situation of extremism it is necessary to include all elements involved, rather than over-simplifying complex issues by branding Islam as the mother-lode of extremism. To gain a proper understanding I have tried to include information necessary for a comprehensive picture of what is going on within the Shi'a Islamic world. As the the second part of this research – Battle of Interpretations – indicates, what is going on, from unrest to extensive violence inside the Islamic world, is in fact an internal clash between different interpretations of Islam in an attempt to find a way out of a current unsatisfactory situation. Muslim activists simply try to brand their particular ideal as the one true Islam. Their ideal is supposed to provide the best solution for their carefully defined problems. For example, if corruption and foreign interference are seen as a problem, almost any agenda with a solution might simply be sold as

‘Islamic’ by such activists.⁷²⁸ To explain why Islamic jurisprudentialism has gained such a high position so that its language has been found attractive by the Muslim violent extremists in the articulation of their actions and supporting rationales, we need to unfold the characteristics of this movement and its place in relation to other comparable Islamic movements.

In doing this we learn that the Islamic faith, when responding to the spiritual, epistemological, and social needs of its followers, does so in terms of mysticism, rationalism, and jurisprudence. Three macro-movements of Sufism, Islamic ethico-rationalism or *kalami* movement, and jurisprudential or *fiqh*-mindedness movement, not only demonstrate three main qualities of Islam but also divide the believers accordingly. Each developed its own religious knowledge, namely *Irfan*, *kalam*, and *fiqh*, which resulted in the formation of three essentially different understandings of Islam: *Irfani* (Mystical) Islam, *Kalami* (Theo-ethical) Islam, and *Fiqhi* (Jurisprudential) Islam.⁷²⁹ Such division has not remained at a theoretical level but rather has influenced practical conduct of the believers as well. Regarding the question of jihad, for instance, while the two camps of Mysticalism and Theo-ethicalism emphasize non-violent understandings of jihad, for the jurisprudential camp jihad is warfare. In order to provide a comprehensive understanding of the issue I have designed my thesis in a way that makes a study of the recent phenomenon of suicide terrorism in the context of classical Islamic (Shi’a) jurisprudence possible.

Part one of this thesis thus focused on the recent development of suicide terrorism. In chapter two the definitional elements of terrorism were examined so that a

⁷²⁸ Soroush, *op cit.*

⁷²⁹ Kadivar, *Hokomat-e Wilaei*, p. 18.

comparison between this modern phenomenon and classical jihad was possible to undertake. Chapter three covered the latests facts and figures about suicide terrorism. In chapter four two main non-jurisprudential religious concepts, Martyrdom and Retaliation and their relation with suicide terrorism, were examined and discussed.

In part two, three main interpretations of Islam – namely Mystical Islam, Theoretical Islam and Jurisprudential Islam – were introduced and their relation to violence, and more specifically jihad, was explained. The final chapter of this part was exclusively concerned with ‘jurisprudentialism’ as a political movement which promotes a rigid legalism as the solution for the problems of today’s Muslims, and especially the issue of corruption, which is posited as a result of foreign intervention or colonialism/imperialism. The main focus of research was on this movement because its language is used by violent extremists the most.

Part three covered the mechanisms of law-making/fatwa-realising in Shia Islam and explained the basic criteria for a valid religious law. Chapter seven was focused on the main sources of Shia Islamic law or *usul al-fiqh* and also the process of law-making, or *ijtihad*. Chapter eight was on Shia fiqh as the body of Shia Islamic laws and had an exclusive focus on ‘jihad’ as an act of worship among nine other acts of worship. In chapter nine, I analysed the theological position of ‘jihad’ in Shia Islam and explained the three main understandings of jihad: jihad as warfare, jihad as spiritual struggle, and jihad as a pious way of life in all aspects. In chapter ten the legitimate forms of jihad according to Shia jurisprudence were compared with the definitional elements of suicide terrorism and the compatibility or inconsistency between different forms of jihad were examined. Finally use of ‘exigency’ as a

technique for bypassing jurisprudence by Shia militants was discussed in the last section of chapter ten.

Although jihad in Islamic jurisprudence, which should be called ‘jurisprudential jihad’, is exclusively about warfare, it is difficult to relate it directly to terrorism. None of the six forms of armed jihad, namely; Preemptive Attack (*jihad ibtida`i*), Self-defense (*difa`*), Confronting Rebels (*qital al-boghat*), Fighting Fear-mongers (*qital al-muharibun*), Guarding Borders (*al-ribat*), and Physical Forbidding of Evil (*nahi anil-munkar bil-yad*) overlap with the four constitutional elements of terrorism. These six forms of jihad in Shia jurisprudence have different executors, targets, means and goals in comparison to terrorism. Terrorism is distinguished by four elements, namely, the use of violence ‘by non-state actors’, being ‘against civilians’, aimed ‘to spread fear’ for ‘political objectives’. By contrast, proper jihad in all of its forms, except that of self-defence, requires the approval of legitimate authorities. Thus non-state actors *cannot* wage jihad as they wish in the manner that non-state executors of terrorism do. Regarding the issue of targets, in jihad there are five categories which enjoy immunity during armed conflict, namely women, children, the elderly, the ill, and the clergy. By contrast, these groups are very often among the main targets of terrorism. Whereas spreading fear is one of the main means of terrorism, fear-mongering is seen as a crime in Shia jurisprudence and there is indeed a specific form of legitimate use of force against it. Finally jihad, in none of its six forms, shares the same political objectives which terrorism tries to achieve through the spread of fear.

Furthermore, terrorism is associated with the sin of harming innocent civilians, and suicide terrorism includes an additional sin, namely ‘suicide’ as such. Thus the rejection of terrorism by Shia jurisprudence logically leads to the rejection of

suicide terrorism as well. However, there is one concept in Shia jurisprudence which offers some flexibility in the use of force that makes it attractive for the supporters of suicide terrorism. This is the ‘negligibility/impunity of unintentional harm to a human shield’ or the ‘question of *tatarros*’. Despite the Shia jurists’ unanimous agreement on the prohibition of targeting a human shield, most jurists consider targeting the enemy while there is a risk to the human shield (whether consisting of Muslims or non-Muslims) to be permissible.⁷³⁰ This rule has been widely used by supporters of suicide terrorism to justify both harm to innocent civilians and also the act of ‘suicide’ by the executors of such operations. This misuse of *tatarros* for justifying suicide terrorism is no more valid than any other excuse for such operations. When suicide terrorists have a clear intention of harming civilians and also themselves by way of counting their action as a case of *tatarros*, in which harm to civilians is deemed ‘unintended’, makes no sense. This rudimentary twisted use of ‘*tatarros*’ for the justification of suicide terrorism shows, jurisprudentially speaking, how empty are hands of terrorists for justifying their acts. The selective use, even misuse, of jihad; being unable to point to any specific section of fiqh that states that suicide terrorism is clearly justified, or the clumsy twisting of jurisprudential terms and concepts, demonstrate the lack of any valid support for suicide terrorism in Islamic jurisprudence.

While all forms of (jurisprudentially) legitimate jihad reject terrorism, there is one principle among the six forms of legitimate use of armed force in Shia jurisprudence, namely, *qital al-muharibun* or ‘fighting the fear-mongers’, which has the potential to be used for directly confronting terrorism. Further, in addition

⁷³⁰ Tusi, *al-Mabsut*, p. 80.

to jihad, there are three other concepts, Martyrdom, Exigency, and Retaliation which are also used to justify terrorism and its suicide version, religiously. Martyrdom used to justify suicide terrorism has distorted the concept of reward for doing the religiously good deed to being an independent valid action and thus it is why suicide terrorism events are called ‘Martyrdom Seeking Operations’ or *amaliyya al-istishhadiyya*. ‘Seeking Martyrdom’, as an independent action from what is approved jurisprudentially, is a deviation from jurisprudence and so jurists cannot sanction it jurisprudentially as it violates the ‘sanctity of life’ principle which is a fixed principle of the religion.

Retaliation is another concept which is used frequently by the perpetrators of suicide terrorism to justify such incidents religiously. Muslims militants who advocate indiscriminate terrorism against civilians justify their actions as a reaction to the wrong deeds of their opponents. Retaliation in the way used by Muslim militants to justify suicide tactics against civilians, more than being a just reaction, is closely associated with pre-Islamic, or *jahili*, tradition of *intiqam*. The term *intiqam* or ‘blind revenge’ has a negative meaning pointing to ‘causing suffering out of hatred and anger’ to random members of a community in retaliation for a harm received from a member of that community. As such *intiqam* is opposite to nay valid notion of a ‘just retaliation’ and is rejected by Islam because wrong deeds of the enemy does not justify any unjust reaction: “... *and do not let the animosity of a people prevent you from being just. Be just; that is nearer to righteousness*” (Q.5:8).

Exigency in certain circumstances allows for the ‘suspension of jurisprudential rules until the State of exigency is over’. ‘Rule of exigency’ is a term derived from a maxim of *usul al fiqh* (principles of jurisprudence) which allows the suspension

of jurisprudential rulings. The rule of exigency indicates that ‘necessity makes the unlawful lawful’ (*al-darurat tubihu al-mazurat*).⁷³¹ The legal maxim of ‘necessity’ is used essentially in favour of the interests of believers, meaning that when the special conditions make the consequences of acting in accordance with religion so onerous, the believer’s obligation is suspended until conditions return to normal, or at least to a more tolerable state. Using this principle, which is fundamentally in favour of the wellbeing of the believers, as justification for suicide terrorism which requires a guaranteed harm to the executer creates a clear paradox. Despite such paradox those Shia ulama who support suicide tactics usually recourse to ‘rule of exigency’ as was discussed in chapter ten.

Recommendations arising from Research

Understanding the divisions within the Islamic faith community is not only of the utmost importance for gaining a better grasp of current intellectual trends in the Islamic scholarship, it can also have specific practical benefits as well. These divisions are not only matters of intellectual debate, but also play an important role in the way that believers see their religion and behave religiously. Distinguishing between three different understandings of Islam is essential for combatting terrorism effectively. Gaining a precise knowledge of an enemy is the first step in an effective struggle, otherwise any uncalculated action in fighting a supposed enemy might bring more harm than good. For example the anti-terror forces that target (militarily or otherwise) the wrong suspects is unconditionally a victory for the extremist camp. Ill-treatment of innocent people, who otherwise have no need

⁷³¹ Kamali, *Shari’ah Law*, p. 285.

for terrorist extremists, then helps the terrorist campaign for recruiting new personnel in a way that no other means can help them that effectively.

To combat terrorism we need to know where this phenomenon, both ideologically and materially, is rooted in and fed by. Again to combat the current violence spread by extremist Muslim militants we need to know about its real nature. Needless to say that any miscalculation about the nature and roots of this violence not only leaves any counter-terror attempt fruitless, it also, by aiming at the wrong targets, may create new challenges and threats. To combat the current wave of terrorism the anti-terror strategy needs to demolish terrorism's social base and for that they need strong cooperation of the mainstream. To gain mainstream support requires speaking to the mainstream in its own cultural language and assuage its concerns regarding the anti-terrorism agenda. Extremists constantly monitor the anti-terrorist actions and approaches and will try to find an excuse to fuel the mainstream's suspicion toward them. And of course losing the mainstream's trust is the last thing that the anti-terror camp needs. We should be aware that extremists can easily use the long history of western colonialism/imperialism to fuel the Muslim masses' suspicion if they can find enough similarities between gestures of the current anti-terror camp and the colonial powers. To win a battle against an enemy such as terrorism, in which the hearts and minds of the affected society are the focus of the combat, first and for most there is a need for winning hearts and minds. For that purpose a clear distinction between different actors of that society is necessary. Such a distinction is essential both for selecting proper communicating language and also avoiding targeting wrongly suspected people.

Issues related to representation is another practical realm where a proper understanding of the internal divisions among Muslims can help with avoiding

miscalculations and escaping costly policies based on wrong assumptions. As Pratt argues ‘true representation’ has always been a major issue in Islam as it has been the case with its sister religions of Christianity and Judaism.⁷³² Usually believers see their own understanding of the religion as the authentic and correct one. Muslims are not exceptions in this regard. In today’s Islamic world different perspectives are competing to gain legitimacy and leadership to guide the direction of the Muslim community.⁷³³ Sufi movements see their version of Islam as the cure for the lustful and violent environment destroying human qualities and are seeking to revive their *tariqas*. Rationalist reform movements seek to purify the faith from customs of pre-modern societies and match it with the current condition and need of modern human society. And of course legalists seeking to establish the Islamic state based on *Sharia*. Needless to say that each movement sees itself as the true Islam and invites people to its way. We need to be aware of the nature of these movements and their internal clashes to avoid painting all Muslim activists with the same brush and treat them accordingly which, in certain circumstances, can have quite problematic consequences. If, as the media is eager to portray, major developments in the Islamic world be seen as anti-west there will be limited optimism regarding success of any joint combat against violent extremism. Whilst if these developments be seen, as they truly are, an internal competition over supremacy and representation among different camps of Islam the outcome can be substantially different. On the contrary, if any development in the Islamic world be seen necessarily as anti-western, and the wrong prescription be advised for confronting it, the outlook for combatting violent extremism can turn even darker.

⁷³² Pratt, *The Challenge of Islam*, p. 3.

⁷³³ Muqtedar Khan. *Washington Report on Middle East Affairs*. April 2001, Vol. 20 Issue 3, p. 82.

Any foreign attack against Muslims might easily lead to marginalization of fundamental internal controversies among Muslims in favour of confronting the foreign threat. An outside threat has always the potential to unite unlike-minded activists and help them forget their essential differences. Such a prioritization of confronting a foreign attack inherently benefits the hardliners in promoting a response of violence.

When approaching Muslims' divisions we need to also be careful about misreading similarities and differences among these divisions. There is, for example, one major confusion resulted from the commonality of a minimal level of spirituality, jurisprudence and creedal discussion among all three camps of Islam which has created the impression that all three are the same with only superficial differences. That is not the case in any way. For example while all three agree on the existence of spiritual elements embedded in the prescribed rites or *manasik*, other than mysticism they do not see Islam as a vehicle for spiritualism without a major outward dimension to it. Again while all three follow minimal outward rites, apart from than jurisprudential camp, the other two do not see Islam as a set of rulings and commands. The same applies to the creedal rational discussions. While the rationalist camp sees the religion as a mere continuation of human reason, with revelation as only a new tool without any superiority over reason,⁷³⁴ the other two either reject reason, as mysticism does, or limit it to merely a tool for discovering rulings of the religion, as jurisprudentialism does.⁷³⁵ As a practical result of misreading the similarities among Muslims of different camps, for example, one might consider any practicing Muslim inherently a fundamentalist and the only

⁷³⁴ Farah, *Islam*, p. 210.

⁷³⁵ Schacht, *Islamic law*, pp. 34-35.

tolerable Muslims for them are the ‘nominal Muslims’ who do not have sincere belief in their religion.⁷³⁶ Whilst in many cases some non-practising Muslims support violence in a much stronger way, it is because they care less for limitations laid down by religion.⁷³⁷ The bottom line is that without a precise understanding of the problem and a genuine knowledge of the engaged factors, doing nothing is better than doing something. But the attitude of ‘doing something’ seems to be the dominant approach in many prescriptions introduced for combatting the current extremism undertaken in the name of Islam. This approach might have gained some battles but has made winning the war against terrorism even more complicated.

A lesson that can be learnt from phenomenon of suicide operations among Shias is that while jurisprudence – because its terms such as jihad are used by the militants – might look like a prominent suspect in the expansion of this phenomenon among religious Shia militants, it seems the strict hierarchy of Shia jurisprudents played an important role in containing suicide tactics and has forced Shia militants to abjure such tactics. When recommending policies for confronting religious terrorism, strategists should pay attention to both the divisions among Muslims, consequently carefully defining the ‘enemy’ and suggesting proportional strategies for different situations – and also the internal capabilities of the target societies in combatting terrorism.

⁷³⁶ Sam Harris vs Fareed Zakaria on Islam - Are most Muslims extremists?, accessible via: <https://www.youtube.com/watch?v=BCM2rU7mFKk>

⁷³⁷ Ramadan, Good Muslim, bad Muslim, *Op cit.*

Bibliography

Abdul Raziq, Ali, "Al-Islam Wa Usul Al-Hukm." In *Al-Islam Wa Usul Al-Hukm: Darasa wa Wathaiq*, Muhammad Amara, ed., Al-Muasasa al-Arabiyya lil-Darasat wa al-Nashr, 1972.

Abedi, M. and G. Legenhausen, eds., *Jihad and Shahadat: struggle and martyrdom in Islam: Mahmud Taleqani, Murtada Mutahhari, Ali Shariati*, The Institute for Research and Islamic Studies, 1986.

Abraham, A. J., Terror in the Mind of God, the Global Rise of Religious Violence, *Journal of Third World Studies* 21(1), 2004.

Abu Davud, *Al-Sunan*.

Abu Ghuddah, H., *Qadhaya Fiqhiyah fi al-Alaqat al-Dovaliyah: Hal al-Harb*, Ryadh, Saudi Arabia, Maktebah al-Abikan, 2000.

Abuza, Z., Political Islam and violence in Indonesia, 2007.

Ahmed, Akbar S., *Islam under Siege*, Polity Press, 2004.

Ahmed, R., Terror in the Name of God: Why Religious Militants Kill. *Far Eastern Economic Review* 166(49), 2003.

Ajami, Fouad, *The vanished Imam: Musa al Sadr and the Shi'a of Lebanon*. Cornell University Press, 1986.

Ajmal, Mohammad, "Sufi science of soul." In *Islamic spirituality*, edited by Seyyed Hossein Nasr, Crossroad, 1987.

Al-Ghazali, Abu Hamid, *Tahafut al-Falasifah*, translated by Ali Asghar Halabi, Jami publications, 1382/2003.

Al-Ghazali, Ihya' 'Ulum al-Din, Beirut: Dar al-fikr, 1975.

Ali, Tariq, *Clash of Fundamentalism: Crusades, Jihads and Modernity*, Verso, 2003.

Al-Yaqubi, Mohammad Bin Ishaq, Tarikh Yaqubi, Vol. 2, translated by Mohammad Ibrahim Ayati, Entesharat Elmi wa Farhangi 1342/1963.

Ankersen, Christopher, ed., *Understanding Global Terror*, Palgrave Macmillan, 2007.

Ansari, Shaikh Mortaza, *al-Taqiya*, edited by Fares al-Hasun, Qaem Al Muhammad Institution, 1412L.

Appleby, R. Scott, *The ambivalence of the sacred; Religion, Violence, and Reconciliation*, Rowman & Littlefield Publishers, 2000.

Armstrong, Karen, *Muhammad; a Western attempt to understand Islam*, Victor Gollancz Ltd, 1991.

Aslan, Reza, *No god but God*, Random House, 2005.

Atran, Scott, 'The moral logic and growth of suicide terrorism', *The Washington Quarterly* (29), 2006.

Avalos, Hector, *Fighting words: the origins of religious violence*, Prometheus Books, 2005.

Ayoub, Mahmoud M., *Islam: Faith and History*, Onewold Publications, 2004.

Bahlul, Raja, 'Is Constitutionalism Compatible With Islam?' In *The Rule of Law History, Theory and Criticism*, edited by Pietro Costa and Danilo Zolo, Springer Verlag, 2007.

Bainbridge, William Sims, 'The Religious Ecology of Deviance', *American Sociological Review*, Vol. 54, No. 2, Apr., 1989.

Bantekas, Ilias, 'The Disunity of Islamic Criminal Law and the Modern Role of Ijtihad', *International Criminal Law Review* 9 (2009), pp. 651–665.

Baqeri, H. and M. Salemi Qamsari, *Amalyate esteshhadi: Chera va chegooneh?* Nashr Nazir, 1381/2002.

Barlow, Hugh D., *For Good: Martyrdom and the Rise of the Suicide Bomber*, Paradigm Publishers, 2007.

Batley, Brek, 'The Justifications for Jihad, War and Revolution in Islam', *Australian Strategic and Defense Studies Centre, Working Paper No. 375*, June 2003.

Bazargan, Mehdi, *Akharat va khoda hadafe besat anbiya* (God and hereafter as goals of prophethood), Rasa publications, 1377/1998.

Bin Hallaq Wael, 'The author-jurist and legal change in traditional Islamic law', *Recht van de Islam* 18, 2001.

Bin Hallaq Wael, *An introduction to Islamic Law*, Cambridge University Press, 2009.

Bin Laden, Osama, 'God knows it did not cross our minds to attack the towers', *The Guardian* London, October 30, 2004.

Bonney, Richard, *Jihad: from Quran to bin Laden*, Palgrave Macmillan, 2004.

Brown, Daniel, 'Hasan al-Banna; the Art of Death and Contemporary Muslim Ideologies of Martyrdom'. In *Religion and Terrorism*, edited by Veronica Ward and Richard Sherlock, Lexington Books, 2014.

Chayes, Sarah, *Thieves of State: Why Corruption Threatens Global Security*, W. W. Norton, 2015.

Choubineh, Sajjad, 'Ahl-e sunnat va masaleh zakat (Sunnis and the question of zakat)', *Journal of Farhang-e jihad*, No. 38, 1383/2004.

Cook, David, *Martyrdom in Islam*, Cambridge University Press, 2007.

Cook, David, *Martyrdom in Islam*, Cambridge University Press, 2007.

Danner, Victor, 'The early developments of Sufism.' In *Islamic spirituality*, edited by Seyyed Hossein Nasr, Crossroad, 1987.

Davis, Joyce, *Martyrs: Innocence, Vengeance, and Despair in the Middle East*, Palgrave Macmillan, 2003.

Dehkhoda, Ali Akbar, *Loghatnameh* (the Dictionary).

Dehlawi, Shah Wali Allah, *Hujjat Allah al-Baligha*, translated by Seyyed Mohammad Yusof Hossein Poor, Howzeh Elmyieh Ain al-Ulum, 2010.

Eagleton, Terry, *Holy terror*, Oxford University Press, 2005.

Eggen, Dan and Wilson, Scott, 'Suicide Bombs Potent Tools of Terrorists.' *Washington Post*, 17 July 2005.

El Houdaigui, Rachid, 'Contemporary suicide terrorism: origins, trends and ways of tackling it.' In *The elements of a complex analytical approach to suicidal*

jihadism, edited by Tatyana Dronzina and Rachid El Houdaigui, NATO Science for peace and security studies IOS Press, 2012.

Esposito, John L. and Mogahed, Dalia, *Who Speaks For Islam? What a Billion Muslims Really Think*, Gallup Press, 2008.

Esposito, John L., *Unholy war: Terror in the name of Islam*, Oxford University Press, 2002.

Esposito, John, and Watson, Michael, eds., *Religion and global order*, University of Wales Press, 2000.

Fadlollah, Seyyed Muhammad Hossein, 'Masouliyyat-e roshanfekran tabeen haqayeq ast (Reformists' responsibility is to clarify ambiguities).' Interview with Muhammad Javad Akbarain, accessible via <http://www.rahesabz.net/story/18772/>

Fanaei, Abulqasem, 'Falsaf-e akhlaq-e islami va rabbet-e din va akhlaq (Islamic philosophy of ethics and the relation between religion and ethics)', *Journal of kharad-e mana*, November 2013.

Fanaei, Abulqasem, 'Naqsh-e din dar khoshounat (role of religion in violence).' Accessible via: <http://neeloofar.org/abolghasemfanaei/darsgoftar/172-naghshe-din-dar-khoshonat/623-naghshe-din-dar-khoshonat-1.html>

Farah, Caesar E., *Islam*, Barrons, 2003.

Faridani Torkzadeh, B., *Mabaniyeh Jihad va Shahadat dar Islam*, Sazemane tablighate Islami Khozestan. 1379/2000.

Farsi, Jalal al-Din, *Payambari va jahad*, Anjam Ketab, 1983.

Fayrahi Davood, *Fiqh wa siyasat dar Iran moaser* (Fiqh and politics in Contemporary Iran), Nashr Nei, 1391/2012.

Forte, David F., 'Islamic law: the impact of Joseph Schacht', *International and Comparative Law Review*, University of Loyola Law School, 1978.

Gambetta, Diego, ed., *Making Sense of Suicide Missions*, Oxford University Press, 2005.

Gates, David, 'Fast chat: Bernard Lewis.' *Newsweek* 138.22 (Nov 26, 2001): 12.

Hampson, Rick, '25 years later, bombing in Beirut still resonates', *USA Today* 15 October 2008. Accessible via http://www.usatoday.com/news/military/2008-10-15-beirut-barracks_N.htm

Hassan, Riaz, 'Global Rise of Suicide Terrorism: An Overview.' *Asian Journal of Social Science* 36 Flinders University Publications, 2008.

Hassan, Riaz, 'What Motivates the Suicide Bombers? Study of a comprehensive database gives a surprising answer', *YaleGlobal*, 3 September 2009.

Hicks M.H., Dardagan H, Bagnall P.M., Spagat M, Sloboda J.A., 'Casualties in civilians and coalition soldiers from suicide bombings in Iraq, 2003-10', *The Lancet*, Vol. 378, Issue 9794, 3 September 2011.

Hilli, Abolqasim Najmaddin Ja`far al-Hilli (famous as Muhaqiq al-Hilli), *Sharaye` al-Islam*, Qum, Dar al-huda lil-tabaye` wal-nashr, 1403 AH (lunar), Vol. 1.

Hilli, Al Hassan ibn Yuosof (famous as Allama al-Hilli), *Tabsira al-mutia`limin*. No Publisher, nd.

Hilli, Al Hassan ibn Yuosof, *Al-Risala al-fakhryyah*, Kitab al-jihad. No Publisher, nd.

Hilli, Allama, *Ershad al-Azhan*. No Publisher, nd.

Hilli, Mohammad Ibn Idriss, famous as Mohaqiq Hilli, *al-Saraer*, Vol. 2, Moassesat ol-Nashr al-Islami, nd.

Hilli, Najm al-Din Jafar ibn Hasan, famous as Muhaqiq al-Hilli, *Sharay` al-islam fil-halal wal-haram*, Ismaeilian publication, 1408L.

Hillih, Allahma, *Talkhis al-Maram*, Kitab al-jihad. No Publisher, nd.

Hoffman, Bruce, 'The Logic of Suicide Terrorism', *Atlantic Monthly* Vol. 295, No. 1 (June 2003): 2.

Hoffman, Bruce, *Inside Terrorism* (2nd Edition), Columbia University Press, 2006.

Hurr al-Amili, Muhammad ibn al-Hassan, *Wasae`il al-Shia*, Vol. 11.

Ibn abil Hadid, *Sharh Nahj al-Balagha*, Vol. 20.

Ibn Athir, *Tarikh kamil*, translated by Seyyed Hossein Rouhani, Vol. 2, Asatir Publications, 1370/1991.

Ibn Khaldun, Abd ar Rahman bin Muhammed, *The Muqaddimah*, trans. Franz Rosenthal. Accessible via:

http://asadullahali.files.wordpress.com/2012/10/ibn_khaldun-al_muqaddimah.pdf

Ibn Khaldun, *Mugaddamah*, translated by Franz Rosenthal, Princeton University Press, 1989.

Ibn Tayy, Jamal al-Din Muhammad, *Aal-Masa'el li-Ibn Tayy*, No Publisher, nd.

Imam Ali, *Nahj al-Balagha*, Lecture No. 40.

Izutsu, Toshihiko, *Ethico-religious Concepts in the Quran*, McGill-Queen's university Press, 2002.

Jaafari Tabrizi, M. T., *Jahad dar Islam*, Daftare nashre farhange Islami, 1378/1999.

Jenkins, Philip, *Images of Terror*, Aldine de Gruyter 2003.

Johnson, James T. and Kelsay, John, *Cross, Crescent, and Sword: The Justification and Limitation of War in Western and Islamic Tradition*, Greenwood Press, 1990.

Jones James, *Blood that cries out from the Earth: the psychology of religious terrorism*, Oxford University Press, 2008.

Jubaei al-Amili, Zain al-Din famous as al-Shahid al-Thani, *Ar-Rawda al-Bahiyya fi sharh al-Luma al-Dimashqiyya*, Al-Adab Publications of Najaf, 1387L/1967.

Juergensmeyer Mark, *Global Rebellion: religious challenges to the secular state from Christian militias to Al Qaeda*, University of California Press, 2008.

Juergensmeyer, Mark, *Terror in the name of God*, University of California Press, 2003.

Kadivar, Mohsen, "Mardomsalari dini (Islamic Democracy)." Accessible via: <http://kadivar.com/?p=5686>

Kadivar, Mohsen, "Tashrih-e didgah-e ayatollah montazeri darbare valayat-e faqih (Standpoint of Ayatollah Montazeri about valayat-e Faqih)." Accessible via: <http://kadivar.com/?p=3072>

Kadivar, Mohsen, *Hokomat-e Wilaei*, Nashr Nei, 1380/2001.

Kamali, Mohammad Hashim, *Principles of Islamic Jurisprudence*, Islamic texts society, 1991.

Kamali, Mohammad Hashim, *Shari'ah Law: an Introduction*, Oneworld Publications 2008.

Kermani-Nezhad, A., *Nezame Defaei Islam*, Zaeem publications, 1385/2006.

Khaledi, M. A., *Falsafe va ahkame Jihad dar Islam*, Ehsan Publications, 1382/2003.

Khan, Muqtedar, "Islamic Law and Its Use in Muslim Politics." Washington Report on Middle East Affairs, Apr2001, Vol. 20 Issue 3.

Khatami, Ahmad, *Abaade jang dar farhange Islam*, Amir Kabir Publications, 1372/1993.

Khomeini, Rouhollah, *Hokoumat-e islami*, Orouj Publications, 1388/2009.

Khomeini, Ruhollah, *Islam and Revolution: Writings and Declarations*, translated by Hamid Algar, Mizan Press, 1981.

Khomeinin, Rouhollah, *Tahrir al-wasilah*, Vol. 1.

Khosrokhavar, Farhad, *Suicide Bombers: Allah's New Martyrs*, translated by David Macey, Pluto Press, 2005.

Khramchikhin, Alexander, 'Suicide terrorism as the most effective method of terrorism: military and migratory aspects'. In *Contemporary Suicide Terrorism: origins, trends and ways of tackling it*, edited by Tatyana Dronzina and Rachid El

Houdaigui, NATO Science for peace and security studies, Vol. 101, IOS Press, 2012.

Kramer, Martin, 'Sacrifice and Self-Martyrdom in Shi'ite Lebanon', accessible via:
<http://www.webcitation.org/query?url=http://www.geocities.com/martinkramerorg/Sacrifice.htm&date=2009-10-26+02:20:23>

Larsson J. P., *Understanding Religious Violence: Thinking Outside the Box on Terrorism*, Ashgate, 2004.

Leaman, Oliver, *Controversies in contemporary Islam*, Routledge, 2014.

Lewis, Bernard and Churchill, Buntzie Ellis, *Islam: The Religion and the People*, Wharton School Publishing, 2008.

Lewis, Bernard, *The crisis of Islam: holy war and unholy terror*, Modern Library, 2003.

Lewis, Bernard, *The Political Language of Islam*, University of Chicago Press, 1988.

Lozada, Carlos, 'Do corrupt governments breed political violence?' Review of *Thieves of State: Why Corruption Threatens Global Security* by Sarah Chayes, *Washington Post*, January 16, 2015. Accessible via:

<http://www.washingtonpost.com/news/book-party/wp/2015/01/16/does-a-corrupt-government-breed-political-violence/>

Makarem Shirazi, Naser, "Tafsir be ra'y va avaqib an (Interpretation by view and its consequences)." Accessible via:

http://maarefquran.org/index.php/page_viewArticle/LinkID,12988.

Makki al-Amili, Muhammad ibn Jamal al-Din famous as Shahid al-Awwal, *al-Doroos al-Shar`iyya*. No Publisher, nd.

Makki al-Amili, Muhammad ibn Jamal al-Din famous as Shahid Thani, *Al-Rawdah al-Bahiyya fi sharh al-Luma al-Dimashqiyya*, Vol. 2, Al-Adab Publication of Najaf, 1387L/1967.

Masoudi, Ali ibn Hussin ibn Ali, *Murouj al-Dhahab*, Vol. 1.

Merton, Robert K., 'Social Structure and Anomie', *American Sociological Review*, No. 3, October 1938.

Michon, Jean-Louis, 'The spiritual practices of Sufism'. In *Islamic spirituality*, edited by Seyyed Hossein Nasr, Crossroad, 1987.

Mir Ahmadi Zadeh, M., *Rabete Fiqh va Hoquq*, Hawzeh Elmieh Qum, 1380/2001.

Mir Arab, F., *Al-Jihad fi mathoor an Ahl el-Sonnah va al-Imammyyah*, Majmae Taqribe Islami, 1384/2005.

Mir, Amir, "Pakistan: The suicide-bomb capital of the world." Asia Times Online Sep. 16, 2011. Accessible via

http://www.atimes.com/atimes/South_Asia/MI16Df04.html

Mirbagheri, S. M. Farid, *War and peace in Islam*, Palgrave, 2012.

Mohammadi Eshtahardi, M., *Jihad*, Daftare Tablighate Islami Qum. nd.

Mohammadi, A., *Mabanie estenbate hoqooqe Islami*, Tehran University Press, 1373/1994.

Mohaqqeq Damad, Mostafa, *Mabahesi az usule Fiqh*, Markaze nashre ulume Islami Tehran, 1382/2003.

Mojtahed Shabestari, Mohammad, 'Tanqih-e mahall-e neza` ba faqihan'.
Accessible via: <http://mohammadmojtahedshabestari.com/articles.php>

Mojtahed Shabestari, Mohammad, 'Muhammad qanungozar va quran ketab-e qanun nist (Muhammad was not a lawgiver and the Quran is not book of law).'
Accessible via: <http://mohammadmojtahedshabestari.com/>

Mojtahed Shabestari, Mohsen, 'Piramoun-e islam va democracy (about Islam and democracy).' Accessible via: <http://www.rahesabz.net/story/57596/>

Molla Mohammad Ali, Amir, *Mabani fiqhi amalyat esteshhadi* (the jurisprudential bases of self-martyrdom operation), Zama zam الهدایت publications, Qom, 1385/2006.

Moosavi Bojnordi, M., *Elme usul*, Tehran, Iran, Majmae elmi va farhangi. 2006

Motahari, Morteza, *Jurisprudence and its Principles*, trans. Salman Tawhidi, Tarikhe Tarsile Quran publications, no date.

Motahari, Mortaza, *koliyyat ulum islami, Hikmat amali: Falsafeh akhlaq*, Vol. 2, Motahari Foundation, 1381/2002.

Motahari, Mortaza, *Usul fiqh va fiqh*, Sadra Publications, nd.

Motahhari, Mortaza, *Jihad*, Sadra Publications, 1384/2005.

Mozaffar, Mohammad Reza, *Usul fiqh*, Hekmat Publications, 1381/2002.

Nasr, Seyyed Hossein, ed., *Islamic spirituality*, Crossroad, 1987.

Nasr, Seyyed Hossein, *Islam; religion, history, and civilization*, HarperCollins, 2003.

Nikfar, Mohammad Reza, *Khoshonat, Hoquqe Bashari, Jame-madani*, Tarhe now, 1378/1999.

Noori Hamadani, Hossein, *Amadegi razmi va marz-dari dar Islam*, Daftare Tablighate Islami Qum, 1377/1988.

Pape, Robert, *Dying to Win: The Strategic Logic of Suicide Terrorism*, Random House, 2005.

Paya, Ali, "Ofut-e filsofan-e mosalman va roshd-e bonyadgarai (Decline of the Muslim philosopher and the rise of fundamentalism)." Accessible via: <http://neeloofar.org/thinker/ali-paya/446>

Payne, John David and Bowen, Donna Lee and Woolstenhulme, Joseph, 'How Religious is Islamic Religious Terrorism?' In *Religion and Terrorism*, edited by Veronica Ward and Richard Sherlock, Lexington Books, 2014.

Paz, Reuven, 'Suicide or martyrdom: the roots of anger that motivated this volcano.' In *The elements of a complex analytical approach to suicidal jihadism*, edited by Tatyana Dronzina and Rachid El Houdaigui, NATO Science for peace and security studies IOS Press, 2012,

Peters, Rudolph, *Jihad in classical and modern Islam*, Markus Wiener Publications, 1996.

Pratt, Douglas, 'From religion to terrorism.' In *Religion and Terrorism*, edited by Veronica Ward and Richard Sherlock, Lexington books, 2014.

Pratt, Douglas, *The challenge of Islam*, Ashgate, 2005.

Qazi Zadeh, K., *Siasat va Hokoomat dar Quran*, Pazhooheshgahe farhang va andishe Islami, 1384/2005.

Ramadan, Tariq, "Good Muslim, bad Muslim." *Newstatesman*, Feb. 2010.

Accessible via:

<http://www.newstatesman.com/religion/2010/02/muslim-religious-moderation>

Reuter, Christoph, *My Life is a Weapon: A Modern History of Suicide Bombing*, Princeton University Press, 2004.

Rinehart James F., *Apocalyptic faith and political violence: prophets of terror*, Palgrave Macmillan, 2006.

Robinson, Neal, *Discovering the Qur'an: A Contemporary Approach to a Veiled Text*, Second Edition, SCM press, 2003.

Rosner, Yotam, Schweitzer, Yoram and Yogev, Einav, 'A Report on Suicide Bombings in 2013.' *INSS Insight* No. 507, January 14, 2014.

Sadr, Muhammad Baqir, *Bohooth fi elm el-usul*, Daeratol maaref Fiqhe Islami Qum, 1375/1996.

Safiri, M., *Kalbod-shekafie Khoshoonat*, Nashre Nei, 1379/2000.

Salehi Najafabadi, Nimatollah, *Jihad dar Islam*, Nashr Nei, 1386/2007.

Schacht, Joseph, *An introduction to Islamic law*, Oxford University Press, 1982.

Schmid, Alex and Jongman, Albert, *Political terrorism: a research guide to concepts, theories, data bases and literature*, Amsterdam: North Holland Publishing company, 1984.

Schmid, Alex P., *The Routledge handbook of terrorism research*, Routledge, 2011.

Schweitzer, Yoram, Levin, Ariel and Yogev, Einav, 'Suicide Attacks in 2014: The Global Picture.' *INSS Insight* No. 653, January 6, 2015. Accessible via: <http://www.inss.org.il/?id=4538&articleid=8514>

Shaaban-Nia, Qasem, *Asare Jihad dar ravabete binalmalal*, Moaseseh amoozeshi va pezhooeshi Imam Khomeini, 1385/2006.

Shahrestani, Taj al-Din Abu al-Fath Muhammad ibn Abd al-Karim, *Al-milal wal nihal*.

Shakerin, Hamid Reza, *Khoshoonat*, Kanoon Andishe Javan, 1383/2004.

Shams al-Din, Muhammad Mahdi, *Fiqh al-`unf al-musallah*, Al-muwasasah al-duwaliyya lil-dirasat wal-nashr, 1422L.

Shariati, Ali, Irfan, *barabari, azadi* (Irfan, egalitarianism and freedom), Nashr Elham, 1389/2010.

Sharpe, Mary, ed., *Suicide bombers: the psychological, religious and other imperatives*, NATO science for peace and security series E: Human and societal dynamics, v. 41, 2008.

Shay, Shaul, *The shahids: Islam and suicide attacks*, Interdisciplinary Center, 2004.

Shepard, William E., *Introducing Islam*, Routledge, 2014.

Sherlock, Richard, 'Religious Terrorism and Monotheism.' In *Religion and terrorism*, edited by Veronica Ward and Richard Sherlock, Lexington Books, 2014.

Siraj ed-Din, Abu Bakr, 'The nature and origin of Sufism'. In *Islamic Spirituality*, edited by Seyyed Hossein Nasr, Crossroad, 1987.

Sobhani Tabrizi, Javad, *Eshareei be mabanie jang va solh dar Islam*, Vezarate Farhang va Ershad Islami-Setade Omoore Jang, 1368/1989.

Soroush, Abdulkarim, 'Anche roshanfekri dini nist (what is not the religious intellectualism)', accessible via: <http://bijanuord.blogfa.com/post-117.aspx>

Soroush, Abdulkarim, 'Reason, freedom and democracy in Islam', accessible via: <https://www.youtube.com/watch?v=S04GZ7e8ovk>

Stern, Jessica, *Terror in the name of God*, Harper Collins Publishers, 2003.

Tabatabaei, Mohammad Hossein, *Shia`h*, translated by Seyyed Hossein Nasr, Arayeh publications, 1385/2006.

Taleqani, Seyyed Mahmud, *Jihad va Shahadat*, Moaseseh Kyhan, 1357/1978.

Tepperman, Lorne and Curtis, James, eds., *Principles of Sociology: A Canadian Perspective*, Oxford University Press, 2006.

Torbati Nezhad, H., *Islam va khosoonat*, Haram Publications Qum, 1382/2003.

Tusi, Abu Jafar Muhammad ibn al-Hasan, *al-Mabsut*. No Publisher, nd.

Tusi, Abu Jafar Muhammad ibn al-Hasan, *al-Khilaf*. No Publisher, nd.

Tusi, Abu Ja`far Muhammad al-Tusi (famous as Shaikh al-Tusi), *Al-Iqtisad*, Kitab al-Jihad. No Publisher, nd.

Ward, Veronica and Sherlock, Richard (eds.), *Religion and Terrorism*, Lexington books, 2014.

Ward, Veronica, 'Martyrdom in the Three Monotheistic Religions.' In *Religion and Terrorism*, edited by Veronica Ward and Richard Sherlock, Lexington Books, 2104.

Watt, W. Montgomery, *Islamic Political Thought*, Edinburgh University Press, 1987.

Weeramantry, Christopher G., 'Justice without Frontiers: Furthering Human Rights', *Kluwer Law International*. Vol 1, 1997.

Whitaker, Brian, 'The definition of terrorism', *The Guardian*, 7 May 2001, Accessible via: <http://www.guardian.co.uk/world/2001/may/07/terrorism>

Yousefi Eshkevari, Hassan, 'Islam aghazi now dar tadavom-e sonnatha-ye kohan (Islam a new start in continuation of the old traditions).' 25 October 2013. Accessible via: <http://yousefieshkevari.com/?p=4049>

Zakariaei, M. A., *Goftemane Teorize Kardane Khoshoonat*, Jame Iranian 1379/2000.

Ziaee Bigdeli, M. H., *Usule Fiqh (Mabani Estenbat)*, Dar ol-Elm Qum, 1377/1998.

Zuhayli, W., *Ahkam ul-harb fil-Islam va khasaeseha al-ensaniyyah*, Damesqs, Syria, Dar al-Maktabi, 2000.

Reports

Special Report: Martyrdom and murder - Suicide terrorism; Suicide terrorism, *The Economist* 370 (8357): 18. (2004).

(CMC) Conflict Monitoring Center *Annual Report* 2011: accessible via <http://cmcpk.wordpress.com/2012/01/01/significant-decline-in-suicide-attacks-in-pakistan/>

Craig S. Karpel , ‘Suicide Superpower: Martyrdom as a Weapon of Mass Destruction’, Tuesday, October 31, 2006. Accessible via: <http://shilohmusings.blogspot.co.nz/2006/10/suicide-superpower-martyrdom-as-weapon.html>

Henry Dodd, ‘A short history of suicide bombing, AOAV’, accessible via: <https://aoav.org.uk/2013/a-short-history-of-suicide-bombings/>
http://unama.unmissions.org/Portals/UNAMA/human%20rights/UNAMA_09february-Annual%20Report_PoC%202008_FINAL_11Feb09.pdf

Joshua Hammer, *NEWSWEEK* (15 April 2002), Accessible via: <http://www.robincmiller.com/articles/a15.htm>

‘Number of suicide bombings around world surged 94% in 2014 amid rise of ISIS’, *Haaretz*. Tuesday, January 06, 2015.

Office of the Coordinator for Counterterrorism, *Patterns of Global Terrorism* 1996, US Department of State Publication 10433, Washington, DC: State Dept., April 1997.

The United States Department of State, *Statistical Information on Terrorism in 2012*, May 2013. Accessible via:

<http://www.state.gov/documents/organization/210288.pdf>.

US Army Training and Doctrine Command, *Handbook No. 1.03 on Suicide Bombing*, 10 August 2006: accessible via

(<http://www.fas.org/irp/threat/terrorism/sup3.pdf>)

US Department of State, *Country Reports on Terrorism 2011*, accessible via

<http://www.state.gov/j/ct/rls/crt/2011/195555.htm>

Websites

Abdulkarim Soroush, 'Wake up; it the time for refreshing thoughts'. Accessible via: <http://drsoroush.com/fa/>

Ahamad Kazemi Mousavi, 'Rethinking concept of jihad'. Accessible via: <http://www.rahesabz.net/story/81151/>

Arthur Buehler, 'Perspective on Islamic Spirituality', Accessible via: http://www.youtube.com/watch?v=oHc1uuxm_Rs

Ayatollah Mohammad Taqi Bahjat, 'Verdict on khums', accessible via: <http://www.bahjat.org/index.php/ahkam/esteftahat/111-2011-09-06-09-21-52.html>

Chicago project on security and terrorism, 'Suicide attack database', accessible via: http://cpostdata.uchicago.edu/search_new.php

Hizbullah Official Website, 11-11-2007

(<http://www.english.moqawama.org/essaydetailsf.php?eid=653&fid=11>)

<http://eyvazian.ir/1390/06/30/>

http://howzeh.org/news/hawzahqom_16656/318515/

http://news.bbc.co.uk/onthisday/hi/dates/stories/october/23/newsid_2489000/2489117.stm

<http://pana.ir/Pages/Printable-News-83860.aspx>

<http://ruhaniat.parsiblog.com/>

<http://www.shabak.gov.il/SiteCollectionImages/english/TerrorInfo/decade/SuicideAttacks.pdf>

<http://www.tabnak.ir/fa/news/268021>

<http://www.tebyan.net/index.aspx?pid=52570>

<http://www.unp.ir/news/university/university-news/12377>

<https://news.vice.com/video/the-islamic-state-full-length>

Real Time with Bill Maher: Ben Affleck, Sam Harris and Bill Maher Debate Radical Islam (HBO), accessible via:

<https://www.youtube.com/watch?v=vln9D81eO60>

Reza Aslan, 'Who Speaks for Islam: What a Billion Muslims Really Think', accessible via: <https://www.youtube.com/watch?v=Bn12s19X8xU>

Sam Harris vs Fareed Zakaria on Islam - Are most Muslims extremists?

Accessible via: <https://www.youtube.com/watch?v=BCM2rU7mFKk>

‘The World’s Muslims: Unity and Diversity’, PEW Research Centre, August 9, 2012 Accessible via: <http://www.pewforum.org/Muslim/the-worlds-muslims-unity-and-diversity-executive-summary.aspx>.

Timothy Winter, ‘Ethics of war’, accessible via: <https://www.youtube.com/watch?v=TOXIKT5IFIM>

Appendices

Appendix No. 1: Shahadah in the Quran

In some English translations including “Saheeh International” the term ‘shohada’, [singular ‘shahid’] has been translated as “martyrs” which is not correct because it turns the term, which is in fact the second attribute of the same group (the believers), into a separate group as “martyrs”. Such translations which are based on understanding the term ‘shahadah’ as “martyrdom” ignore the rest of the term which is ‘inda rabbihim’ and translate the term ‘shahadah’ separately. It is while ‘shohada inda rabbihim’ (الشُّهُدَاءُ عِنْدَ رَبِّهِمْ) or “those who present before their Lord” points to a very high spiritual position which has been allocated to those with true belief and deed. The same as other translations, there are a wide range of translations of the Quran in other languages which some are more committed to the literal meaning and some are less committed. The difference is that the Quran like other holy texts is manifesto for virtuous conduct for many Muslims and therefore such translations not only affect the believers’ conduct but can also shape non-Muslims’ image of Islam and Muslims as well.

While these kinds of differences might appear to arise from simple differences of taste among translators, the fact is that such disparities are actually based on varying understanding of the holy text and can therefore alter the sense of the text significantly. Briefly, those who believe that the term ‘shahadah’ in the Quran means “martyrdom” usually base their view on such translations which, as detailed above, are the result of interpolating this understanding of the term into the translation. Of course, good translations express as close a meaning to that intended in the source language text, and do not impose the translator’s subjective preference on the term.

Below is a selection of different translations of the relevant verse (57:19), which shows how the translations can alter the sense.

Saheeh translation:

And those who have believed in Allah and His messengers - those are [in the ranks of] the supporters of truth and the martyrs, with their Lord. For them is their reward and their light. But those who have disbelieved and denied Our verses - those are the companions of Hellfire.

Ahmed Ali translation:

Those who believe in God and His apostles are true of word and deed; and by their Lord are considered testifiers of the truth. They have their guardian and their light. As for those who do not believe and reject Our revelations, are the people of Hell.

While neither of the above reflects an exact literal translation, they are significantly different. As we see Ahmed Ali has translated ‘shohada inda Rabbihim’ as: “[those who] by their Lord are considered testifiers of the truth” which is more in-line with literal meaning of the term while in ‘Saheeh’ ‘shohada’ has been translated as “martyrs”.

Appendix No. 2: Five categorisation of religious duties according to Shia jurisprudence:

Wajib, or obligatory, means that it must be done and must not be left undone, like fasting during Ramadan or doing the five daily prayers.

Haram, or forbidden, means that it must not be performed and must be refrained from like lies, drinking alcohol and eating pork.

Mustahab, or desirable, means that it is good to do but leaving it undone is not a sin such as praying in a mosque instead of doing it individually at home.

Makruh, or undesirable, means that it is bad to do but if done no punishable sin is committed, like talking about worldly affairs in a mosque which is a place of worship.

Mubah, or permissible, means that the doing of it and the not doing of it are exactly equal, and this includes most actions which there is no harm to oneself or others in doing or leaving them.

Appendix No. 3: Jihad verses in the Quran

- 1- *Surely those who believed and those who fled (their home) and strove hard (j-h-d) in the way of Allah these hope for the mercy of Allah and Allah is Forgiving, Merciful. (2:218)*
- 2- *Do you think that you will enter the heaven while Allah has not yet known those who strive hard (j-h-d) from among you, and (He has not) known the patient. (3:142)*
- 3- *The holders back from among the believers, not having any injury, and those who strive hard (j-h-d) in Allah's way with their property and their persons are not equal; Allah has made the strivers with their property and their persons to excel the holders back a (high) degree, and to each (class) Allah has promised good; and Allah shall grant to the strivers above the holders back a mighty reward: (4:95)*
- 4- *O you who believe! be careful of (your duty to) Allah and seek means of nearness to Him and strive hard (j-h-d) in His way that you may be successful. (5:35)*
- 5- *And those who believe will say: Are these they who swore by Allah with the most forcible (j-h-d) of their oaths that they were most surely with you? Their deeds shall go for nothing, so they shall become losers. (5:53)*
- 6- *O you who believe! whoever from among you turns back from his religion, then Allah will bring a people, He shall love them and they shall love Him, lowly before the believers, mighty against the unbelievers, they shall strive hard (j-h-d) in Allah's way and shall not fear the censure of any censurer; this is Allah's Face, He gives it to whom He pleases, and Allah is Ample-giving, Knowing. (5:54)*

- 7- *And they swear by Allah with the strongest (j-h-d) of their oaths, that if a sign came to them they would most certainly believe in it. Say: Signs are only with Allah; and what should make you know that when it comes they will not believe? (6:109) [Meccan]*
- 8- *Surely those who believed and fled (their homes) and struggled hard (j-h-d) in Allah's way with their property and their souls, and those who gave shelter and helped-- these are guardians of each other; and (as for) those who believed and did not fly, not yours is their guardianship until they fly; and if they seek aid from you in the matter of religion, aid is incumbent on you except against a people between whom and you there is a treaty, and Allah sees what you do. (8:72)*
- 9- *And (as for) those who believed and fled and struggled hard(j-h-d) in Allah's way, and those who gave shelter and helped, these are the believers truly; they shall have forgiveness and honorable provision. (8:74)*
- 10- *And (as for) those who believed afterwards and fled and struggled hard (j-h-d) along with you, they are of you; and the possessors of relationships are nearer to each other in the ordinance of Allah; surely Allah knows all things. (8:75)*
- 11- *What! do you think that you will be left alone while Allah has not yet known those of you who have struggled hard (j-h-d) and have not taken any one as an adherent besides Allah and His Apostle and the believers; and Allah is aware of what you do. (9:16)*
- 12- *What! do you make (one who undertakes) the giving of drink to the pilgrims and the guarding of the Sacred Mosque like him who believes in Allah and*

the latter day and strives hard (j-h-d) in Allah's way? They are not equal with Allah; and Allah does not guide the unjust people. (9:19)

13- Those who believed and fled (their homes), and strove hard(j-h-d) in Allah's way with their property and their souls, are much higher in rank with Allah; and those are they who are the achievers (of their objects). (9:20)

14- Say: If your fathers and your sons and your brethren and your mates and your kinsfolk and property which you have acquired, and the slackness of trade which you fear and dwellings which you like, are dearer to you than Allah and His Apostle and striving (j-h-d) in His way, then wait till Allah brings about His command: and Allah does not guide the transgressing people. (9:24)

15- Go forth light and heavy, and strive hard (j-h-d) in Allah's way with your property and your persons; this is better for you, if you know. (9:41)

16- They do not ask leave of you who believe in Allah and the latter day (to stay away) from striving hard (j-h-d) with their property and their persons, and Allah knows those who guard (against evil). (9:44)

17- O Prophet! strive hard (j-h-d) against the unbelievers and the hypocrites and be hard against them; and their abode is hell, and evil is the destination. (9:73)

18- Those who criticize the contributors among the believers concerning [their] charities and [criticize] the ones who find nothing [to spend] except their effort (j-h-d), so they ridicule them - Allah will ridicule them, and they will have a painful punishment. (9:79)

19- Those who were left behind were glad on account of their sitting behind Allah's Apostle and they were averse from striving (j-h-d) in Allah's way

with their property and their persons, and said: Do not go forth in the heat. Say: The fire of hell is much severe in heat. Would that they understood (it). (9:81)

20- And whenever a chapter is revealed, saying: Believe in Allah and strive hard (j-h-d) along with His Apostle, those having amplexness of means ask permission of you and say: Leave us (behind), that we may be with those who sit. (9:86)

21- But the Apostle and those who believe with him strive hard (j-h-d) with their property and their persons; and these it is who shall have the good things and these it is who shall be successful. (9:88)

22- And they swear by Allah with the most energetic (j-h-d) of their oaths: Allah will not raise up him who dies. Yea! it is a promise binding on Him, quite true, but most people do not know; (16:38) [Meccan]

23- Yet surely your Lord, with respect to those who fly after they are persecuted, then they struggle hard (j-h-d) and are patient, most surely your Lord after that is Forgiving, Merciful. (16:110) [Maccan]

24- And strive hard (j-h-d) in (the way of) Allah, (such) a striving as is due to Him; He has chosen you and has not laid upon you an hardship in religion; the faith of your father Ibrahim; He named you Muslims before and in this, that the Apostle may be a bearer of witness to you, and you may be bearers of witness to the people; therefore keep up prayer and pay the poor-rate and hold fast by Allah; He is your Guardian; how excellent the Guardian and how excellent the Helper! (22:78)

25- And they swear by Allah with the most energetic (j-h-d) of their oaths that if you command them they would certainly go forth. Say: Swear not;

reasonable obedience (is desired); surely Allah is aware of what you do.
(24:53)

26- *So do not follow the unbelievers, and strive (j-h-d) against them a mighty striving(j-h-d) with it (the Quran). (25:52) [Meccan]*

27- *And whoever strives hard (j-h-d), he strives (j-h-d) only for his own soul; most surely Allah is Self-sufficient, above (need of) the worlds. (29:6) [Meccan]*

28- *And We have enjoined on man goodness to his parents, and if they contend (j-h-d) with you that you should associate (others) with Me, of which you have no knowledge, do not obey them, to Me is your return, so I will inform you of what you did. (29:8) [Meccan]*

29- *And (as for) those who strive hard (j-h-d) for Us, We will most certainly guide them in Our ways; and Allah is most surely with the doers of good. (29:69) [Meccan]*

30- *And if they (your parents) contend (j-h-d) with you that you should associate with Me what you have no knowledge of, do not obey them, and keep company with them in this world kindly, and follow the way of him who turns to Me, then to Me is your return, then will I inform you of what you did-- (31:15) [Meccan]*

31- *And they swore by Allah with the strongest (j-h-d) of their oaths that if there came to them a warner they would be better guided than any of the nations; but when there came to them a warner it increased them in naught but aversion. (35:42) [Meccan]*

32- *And most certainly We will try (examine) you until We have known those among you who exert themselves hard (j-h-d), and the patient, and made your case manifest. (47:31)*

33- *The believers are only those who believe in Allah and His Apostle then they doubt not and struggle hard (j-h-d) with their wealth and their persons in the way of Allah; they are the truthful ones. (49:15)*

34- *O you who believe! do not take My enemy and your enemy for friends: would you offer them love while they deny what has come to you of the truth, driving out the Apostle and yourselves because you believe in Allah, your Lord? If you go forth struggling hard (j-h-d) in My path and seeking My pleasure, would you manifest love to them? And I know what you conceal and what you manifest; and whoever of you does this, he indeed has gone astray from the straight path. (60:1)*

35- *You shall believe in Allah and His Apostle, and struggle hard (j-h-d) in Allah's way with your property and your persons; that is better for you, did you but know! (61:11)*

36- *O Prophet! strive hard (j-h-d) against the unbelievers and the hypocrites, and be hard against them; and their abode is hell; and evil is the resort. (66:9)*

Appendix No. 4: Some official definitions of terrorism

United Nations General Assembly Resolution 51/210 (1996)

“...criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.”

United Nations Security Council Resolution 1566 (2004)

“criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.”

Official United States Government Definition of Terrorism

“[An] act of terrorism, means any activity that (A) involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and (B) appears to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by assassination or kidnapping.”

(United States Code Congressional and Administrative News, 98th Congress, Second Session, 1984, Oct. 19, volume 2; par. 3077, 98 STAT. 2707 [West Publishing Co., 1984]) accessible via:

<http://yeoldeconsciousnesshoppe.com/art98.html>

United States Department of States

“Premeditated, politically motivated violence perpetuated against non-combatant targets by subnational groups or clandestine agents, usually intended to influence an audience”

(Office of the Coordinator for Counterterrorism, Patterns of Global Terrorism 1996, US Department of State Publication 10433, Washington, DC: State Dept., April 1997, vi.)

United States Federal Bureau of Investigation (FBI)

“The unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives” Accessible via:

<http://www.azdema.gov/museum/famousbattles/pdf/Terrorism%20Definitions%200072809.pdf>

United States Department of Defence

“the unlawful use of — or threatened use of — force or violence against individuals or property to coerce or intimidate governments or societies, often to achieve political religious, or ideological objectives”. Accessible via:

<http://www.azdema.gov/museum/famousbattles/pdf/Terrorism%20Definitions%200072809.pdf>

United States Army

“calculated use of unlawful violence or threat of unlawful violence to inculcate fear. It is intended to coerce or intimidate governments or societies ... [to attain] political, religious, or ideological goals.” U.S. Army Field Manual No. FM 3-0, Chapter 9, 37 (14 June 2001).

European Union

The European Union defines terrorism for legal/official purposes in Art.1 of the Framework Decision on Combating Terrorism (2002). This provides that terrorist offences are certain criminal offences set out in a list comprised largely of serious offences against persons and property which:

“given their nature or context, may seriously damage a country or an international organization where committed with the aim of: seriously intimidating a population; or unduly compelling a Government or international organization to perform or abstain from performing any act; or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.” Accessible via:

<http://www.azdema.gov/museum/famousbattles/pdf/Terrorism%20Definitions%0072809.pdf>

Canadian Security Intelligence Service

“...the deliberate and systematic threat or use of violence to achieve an objective. In the modern context, the expression is generally associated with politically motivated coercion”

(Canadian Security Intelligence Service Publications, Commentary No. 13, “Terrorism and the Rule of Law: Dangerous Compromise in Colombia,” October 1991.)

Australian Department of Foreign Affairs and Trade

In Australia, what constitutes an act of terrorism is defined in Commonwealth legislation. The Criminal Code Act 1995 states that a terrorist act means an action or threat of action where the action causes certain defined forms of harm or interference and the action is done or the threat is made with the intention of advancing a political, religious or ideological cause. Further, the Act states that 'the action is done or the threat is made with the intention of:

- i. coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or part of a State, Territory or foreign country; or
- ii. intimidating the public or a section of the public and where the action:
 - (a) causes serious harm that is physical harm to a person; or
 - (b) causes serious damage to property; or
 - (c) causes a person's death; or
 - (d) endangers a person's life, other than the life of the person taking the action; or
 - (e) creates a serious risk to the health or safety of the public or a section of the public; or

(f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to: (i) an information system; or (ii) a telecommunications system; or (iii) a financial system; or (iv) a system used for the delivery of essential government services; or (v) a system used for, or by, an essential public utility; or (vi) a system used for, or by, a transport system.

The Criminal Code makes it an offence if a person commits a terrorist act, provides or receives training connected with terrorist acts, possesses a thing connected with terrorist acts, collects or makes documents likely to facilitate terrorist acts, or does any act in preparation for or planning of terrorist acts. The penalty for engaging in a terrorist act is life imprisonment.

Accessible via: <http://www.dfat.gov.au/publications/terrorism/chapter1.html>

Appendix No. 5: Contradiction of ‘preemptive jihad’ with Quranic verses

Regarding justification of “preemptive jihad” by the Quran first of all we should notice that 10 out of 41 cases where the term jihad is mentioned in the Quran are in Meccan suras. Out of these 10 cases in 4 of them (16:110, 25:52 [two times], and 29:69] jihad is used quite general. These four Meccan verses have been used by pro-preemptive jihad to support their argument in interpreting jihad in military way. We know that the first time armed defence was permitted was the second year of *hijra* through verse 22:39. Then when many verses of jihad are Meccan (before armed defence become allowed) jihad cannot mean warfare even if it is used in general sense as it is in Meccan suras. Other than that those verses on war clearly limit fighting to self defence. As such Quranic verses have been an obstacle in front of “preemptive jihad” rather than been a facilitator for it. Overcoming this obstacle was the necessary step for achieving the goal in justifying an offensive strategy religiously. How was this significant obstacle overcome?

To overcome the limitations imposed on use of armed force, Muslims jurists use some techniques to distort the clear message of the Quran in this regard. Previously I discussed some of the principles of jurisprudence including those of “generalities” and “particularities”. “General” rulings are limited by “particular” ones in jurisprudence. It means that when a general verse like Q.2:244 is referred to, it must be understood within the framework indicated by related particular verses such as Q.2:190. In this case the later one limits the former and determines its range. Thus verse Q.2:244 generally invites believers to fight in the cause of Allah:

*And fight in the cause of Allah and know that Allah is Hearing and Knowing. (Q.2:244)*⁷³⁸

At the same time verse Q.2:190 prohibits believers to start fighting and only allows them to fight back when they are attacked:

Fight in the way of Allah those who fight you but do not start fighting.

*Indeed Allah does not like transgressors. (Q.2:190)*⁷³⁹

The principle of “*generalities and particularities*” requires verse Q.2:244 to be limited according to Q.2:190. It is also the case with general rulings in verses Q.2:216, Q.4:74, Q.4:76, Q.9:28, Q.9:123, and Q.47:4. While verses 2:216, 2:44, 4:74, 4:75, 4:76, 9:29, and 9:123 generally encourage believers to be prepared to fight back if required, verse 47:4 is a verse of battlefield and has no potential to be generalised beyond that. Verse 47:4 is fundamentally about *jus in bello* rather than supportive of war in general. If the above mentioned verses including 47:4 are interpreted in contradiction with verses Q.190, Q.2:191, Q.2:192, Q.2:193, 22:39, 22:40, 9:13, and 9:36 then it means that the Quran has been biasedly misused. If they are understood naturally and in line with the recent group they all together only approve self defence and nothing more.

What scholars in favour of “offensive jihad” did to enervate the limiting verses and the verses of peace was using another principle called “the abrogater and the abrogated”, or *nasikh* and *mansukh* (الناسخ و المنسوخ). They claimed that all limiting verses have been abrogated by the general verses.⁷⁴⁰ This was demonstrated by

⁷³⁸ وَقَاتِلُوا فِي سَبِيلِ اللَّهِ وَاعْلَمُوا أَنَّ اللَّهَ سَمِيعٌ عَلِيمٌ (البقرة: ٢٤٤)

⁷³⁹ وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ (البقرة: ١٩٠)

⁷⁴⁰ Imam Shafi`I, Kitab al-Umm, Beirut, Dar al-Ma`rafa, section 4, p. 161.

Imam Shafie'i, founder of Sunni Shafie'i School of jurisprudence.⁷⁴¹ Such interpretations, and imposing self preferences on the religious ruling and the Quran, were not uncommon among earlier Muslims either. For example Khalid bin Walid did several wrong things in one incident of war. These included killing a rebel Muslim and marrying his wife the same day. The issue was brought to Abu Bakr, the first Caliph. Khalid simply defended himself saying that his "ijtihad" convinced him that it was not wrong to do so and that he acted based on his ijtihad, or interpretation of religious rulings. His reasoning was accepted and he did not face any punishment.⁷⁴² It was mostly because Khalid was a very strong commander and his punishment might have been against interests of the Islamic state especially during the hard time of "battle of apostates".⁷⁴³ It might be interpreted that when ijtihad can be used for the interest of one person it can be used for interest of the whole Islamic society.

In addition to the "particular verses", offensive doctrine of jihad also violated those Quranic verses which declare "peace" as the abiding principle⁷⁴⁴ and "war" as a temporary situation in case of being attacked.⁷⁴⁵ Verse 2:256, 60:8, and 61:8 are among those which clearly issue an invitation to peace and reject aggression.⁷⁴⁶ Like the limiting verses of "particulars", all these verses of peace

⁷⁴¹ See: Imam Shafi`I, Kitab al-Umm, Beirut, Dar al-Ma`rafa, section 4.

⁷⁴² Muhammad bin Jarir al-Tabari, *Tarikh Tabari*, Vol. 3, pp. 387-389.

⁷⁴³ Tabari, *Tarikh*, p. 387.

⁷⁴⁴ Q.4:128.

⁷⁴⁵ Q.2:192, Q.2:193.

⁷⁴⁶ *Allah does not forbid you from those who do not fight you because of religion and do not expel you from your homes - from being friendly toward them and acting justly toward them. Indeed, Allah loves those who act justly.* (Q.60:8)

لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِّن دِيَارِكُمْ أَن تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ ۗ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ
(ممتحنه ٨)

also have been labelled as “abrogated” by advocates of aggressive jihad.⁷⁴⁷ The question is that if such verses of peace were vain, why did God send them to his Prophet in the first place? Accusing God of being forgetful or being someone who changes his mind every now and then, and abrogates what he was believing right and good before is the direct consequence of such opportunistic approach toward peace-binding verses of the Quran. Showing God’s words so inconsistent that need to be corrected so that favour Muslims gaining more lands and wealth in the name of jihad. Arguably, accepting “general” and “particular” verses on fighting and also the verses of peace all together implies the rejection of aggression and proves self defence. Approval of self defence by Islam is something that no one needs to be ashamed of and apologise for it. But the Quran clearly rejects “jihad” in its offensive form and technical tricks used by jurists, as we witnessed in case “abrogation” recently, does not change the reality. Tabari in his “exegesis”, or al-Tafsir, announces claim of advocates of offensive jihad illogical and says that there is no evidence and no need for such an “abrogation”.⁷⁴⁸

And if they [your enemy] incline to peace, then incline to it [also] and rely upon Allah. Indeed, it is He who is the Hearing, the Knowing. (Q.8:61)

وَإِنْ جَنَحُوا لِلسَّلْمِ فَاجْنَحْ لَهَا وَتَوَكَّلْ عَلَى اللَّهِ إِنَّهُ هُوَ السَّمِيعُ الْعَلِيمُ (الانفال (١٦١)

⁷⁴⁷ Imam al-Shafie'i, Al-Umm: section of jihad.

⁷⁴⁸ Muhammad bin Jarir al-Tabari, Tafsir al-Quran, Interpretation of the verse number 190 of Chapter two.

Appendix No. 6: Sufi Tariqas

Bektashi

The Bektashi Order was founded in the 13th century by the Islamic saint Haji Bektash Veli. Because of its adherence to the Twelve Imams it is classified by some under Twelver Shi'a Islam. Bektashi are concentrated in Albania and Turkey, and their headquarters are in Albania.

Chishti

The Chishti Order was founded in the 10th century by Abu Ishaq al-Shami who brought Sufism to the town of Chist, in present-day Afghanistan. Before returning to the Levant, Shami initiated, trained and deputized the son of the local governor Abu Ahmad Abdal. Under the leadership of Abu Ahmad's descendants, the Chishti Tariqa flourished as a regional mystical order and still has a notable number of followers.

Naqshbandi

The Naqshbandi tariqa is one of the major Sufi orders of Islam. Formed in 14th century by Baha al-Din Naqshband Bukhari, the order is known for its silent dhikr (remembrance of God) rather than the vocalized forms of dhikr common in other tariqas.

Uwaysi

Uwaysi tariqa is called after Uways of Qaran a place in today Yemen. The Uwaysi tariqa claims to be founded 14 century ago by Uways al-Qarn. Uways received the teachings of Islam inwardly through his heart and lived by them, although he had never physically met Prophet Muhammad. A well-known quote attributed to the Prophet Muhammad has him say about Uways "I feel the breath of the Merciful, coming to me from Yemen." Pointing to Uways' high spiritual qualities. Qadiri

The *Qadiri* tariqa derives its name from Abdul-Qadir al-Jilani (d. 1166), a native of the Iranian province of Gilan (pronounced Jilan in Arabic because of lack of the letter "G" in

Arabic language). The order is one of the most widespread of the Sufi orders in the Islamic world. The Qadiriyyah have not developed any distinctive doctrines or teachings outside of mainstream Islam. They believe in the fundamental principles of Islam, but interpreted through mystical experience.

There are also some small Sufi orders such as Mouridi, Tijaniyyah, and Shadhili, which among them the previously mentioned Mawlawyyah order (better known in the West as the “whirling dervishes”) is more famous because of its special sama or dance.

Appendix No. 7: Note on translation and transliteration

For the Quran, Hadith and classical jurisprudential text, direct quotations are placed in Italics. In transliteration I transliterate as words are pronounced. For example the name ‘Mortaza’ which is pronounced differently in Persian and Arabic is written according to the source language. As such the Persian jurist, Motahari’s first name is written ‘Mortaza’ while the classical jurist name ‘al-Murtada’ is written as pronounced in Arabic while both are actually the same name but are pronounced differently in Arabic and Persian.

For translation of the Quranic verses I have used Tanzil translations but have modified and corrected them whenever necessary to suit this research. All translations of the classical jurisprudential texts are mine unless stated otherwise.