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Protection of Woman in Light of the Ethics of War In Islamic Law

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Abstract:

This study deals with the issue of protecting woman, especially in the most difficult circumstances ,war, based on the ethics derived from Islamic law, by raising the main research question: "How did Islam protect woman during war in light of the ethics of combat? And to what extent does this align with the provisions of international humanitarian law?". This study used an inductive analytical comparative approach in a scientific way aimed at defining the concept of protecting woman, clarifying the reality of war and its objectives in Islamic law, explaining the foundations and principles of this protection, and showing its forms in comparison with international humanitarian law.

The study concluded that woman have a high status in Islamic law, whether in peace or in war, and that Islamic law was the first to set ethical and legal rules to guarantee the protection of humanity in general and civilians in particular, including woman during armed conflicts. International humanitarian law acknowledges the right to protection for civilians in general and woman in particular, but the actual implementation of these legal provisions is still lacking.

Key words: Protection of Woman, Ethics of War, Woman, Islamic Law, Principles of Protection, Reality of War

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1. INTRODUCTION:

Islam has honored the humankind, distinguished, and favored them over all its creatures, and made the bond of human brotherhood the basis of relations between all people. God Almighty said: {O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of God is the most righteous of you. God is Knowing and Acquainted}. [Al-Hujurat:13]; So there is no difference between male and female, neither Arab and non-Arab, nor black and white except through fear of God Almighty, and the last thing that came in the farewell sermon was: "O people, Your Lord is one, and your Father is one. There is no superiority for an Arab over a non-Arab, and no non-Arab over an Arab, and no red over black, and no black over red except through piety, the most honorable of you in the sight of God is the most pious of you"[1].

Islam gives humanity its value regardless of color, gender, race, etc, and thus gives woman rights[2], and a great position that she had never attained in a previous shariah or humanitarian law; He placed Paradise under her feet if she was a mother, obligated obedience and righteousness to her three degrees onto the father, and she is the reason for her guardian to enter Paradise if she is a daughter or sister, if he takes good care of her, and she is the basis of the house if she is a wife; The husband is in charge of her affairs, protects her, takes care of her, and treats her kindly, and she has her financial rights of alimony, dowry, inheritance, and independence in financial responsibility, and many other rights that included all fields: scientific, political, social and others ... - which there is not enough space to

1. Suleiman bin Ahmed Al-Tabarani. The Great Dictionary. vol 18, p12.
2. Abdul Qadir Shaybah Al-hamad, Rights of Woman in Islam. p. 11 et seq. Muhammad Al-Ghazali, Muhammad Sayyid Tantawi, Ahmad Omar Hashi. woman in Islam. p. 6 et seq. Muhammad bin Jamil Zaino. Honoring woman in Islam, p. 9 et seq.

mention -

All of this is in normal cases or what is called a state of peace, to raise question; How did e treat it during the war? Did Islamic law protect her as He protected her in times of peace? This results in several sub-questions: What is meant by protecting woman? What is the reality of war and what are its objectives in Islamic law? What are the foundations and principles of this protection? What are its manifestations? This is what we are trying to answer through this study.

First: Reasons for the study:

1- The suffering of civilians in general, and woman in particular, in modern wars. The best example of this is what is happening in Gaza, Sudan, and elsewhere.

2- Many people don't know the legal rulings that specifically honor woman in peace and war.

3- The absence of a system of values and morals in modern wars and the embodiment of the saying of "survival for the fittest".

Second: Study objectives:

1- Explaining the true status of woman in Islamic law in the most difficult circumstances, which is the state of war.

2- Explaining that Islam has the precedence and distinction in honoring woman that contemporary human rights organizations and woman's bodies have not achieved.

3- Explaining the true concept of war in Islam and rejecting all suspicions attached to it.

4- Explaining the extent to which Islamic law adheres to morals and values in peace and war.

5- Knowing the position of international humanitarian law on the right to protect woman in armed conflicts.

Third: Method of the study:

The study relied on the inductive, analytical, and comparative approach by examining religious texts that confirm the protection of civilians in general, and woman in particular, during war, while also referring to what is stated in international humanitarian law.

Fourth: Study plan:

1-The concept of protecting woman in Islamic law:

-Definition of protection
-Definition of the Protection of Woman in Islamic Law.

2- The reality of war in Islam and its purposes.

- The relationship between Muslims and others is based on peace not war:
- Jihad for the sake of God is a reaction after conveying the call.
- The reality of jihad for the sake of God or war in Islam.

3- Manifestations of protecting woman in war in Islamic law

- Manifestations of protecting civilians in general.
- Manifestations of protecting woman in particular.

2. The concept of protecting woman in Islamic law:

This section discusses the meaning of woman's protection in Islamic legislation, starting with defining the meaning of protection and then identifying the protection associated with woman in light of Islamic law as follows:

2.1. Definition of protection:

To determine the meaning of protection, it is worth to explain its linguistic meaning, then the technological meaning, and the apparent compatibility between the two meanings:

2.1.1: Definition of protection linguistically:

Protection means prevention, support, protection and defense;

from this, "to protect something protection, he prevented it and repelled it"[3], and it is said: "He protected him from something and the thing protected him: prevented him from what would harm him...and (to protect) something means heating it, and the place: made it a shield that cannot be approached and he found it a shield, (to protect) it with defence: he defended, (to take refuge)...from someone means he feared him and sought refuge in him"[4] .

In conclusion: Protecting something means (preventing) it from being approached by something... and its type differs according to what it is added to.

2.1.2 Definition of protection technically:

Through our research, we found no difference between the linguistic and technical meanings of protection. The linguistic meaning is the same as the technical, and the root meaning of

3. Muhammad bin Makram bin Manzur, vol 14 ,The Tongue of Arab. p.197
4. Ibrahim Mustafa, Ahmed Al-Zyat, Hamed Abdel Qader, Najjar-Muhammad Al. Intermediate Dictionary, vol 1.p200 .

protection itself does not differ. Rather, the type of protection differs depending on what is added to it.

2.2. Definition of the Protection of Woman in Islamic Law:

The general purpose of Islamic law is to bring benefits to people and ward off corruption from them in this life and the hereafter. This is what Abdul Wahab Khallaf pointed out, and he added: "because the People's interests in this life consist of things that are essential to them, things that are necessary, and things that are beneficial. If their necessities, needs, and improvements are met, then their interests are achieved. The Islamic legislator has legislated rulings in various aspects of human actions to achieve the most basic necessities, needs, and improvements for individuals and groups. It has not neglected a necessity, need, or improvement without legislating a ruling to achieve and preserve it. It has not legislated a ruling except to create and preserve one of these three. It has not legislated a ruling except to achieve the interests of the people. And it has not neglected an interest required by the people's situation, for which it has not legislated a ruling"[5].

The intended interest is that which includes preserving the five fundamentals: religion, soul, mind, offspring and wealth; So, True protection for a person can not be achieved unless he is secure in these five fundamentals. Therefore, the intended purpose of **protecting woman is: to prevent, from her, everything that would harm her in her religion, soul, mind, offspring and wealth.**

5.Azhar Youth-Al . Fundamentals of Jurisprudence,p198 .

3. The reality of war in Islam and its objectives:

War in Islam has a reality that differs from war in other systems in terms of concept and objectives. Therefore, dealing during it differs according to that concept and its objectives, whether with combatants or with civilians, including woman. So, it must be explained to clarify the basis upon which the protection of woman in Islam during war is based, as following:

3.1. The relationship between Muslims and others is based on peace not war:

The issue of the origin of the relationship between Muslims and others has occupied a large space in understanding of Muslim researchers, to the point that research into has become the basis for most of those who have spoken about international relations in Islam. They have been divided into two groups; one of which based the origin of the relationship on the basis of peace, and the other on the basis of war, each of them relied on evidence and arguments to support his opinion, from the Qur'an and nah-Sun, as well as the practical reality of the events of the Prophet's biography, also relying on history of the caliphs after Him, Peace Be Upon Him. Perhaps the opinion that is consistent with the reality of security in Islam, and that brings together the long-term goal of both opinions is to build the foundation of the relationship between Muslims and others on the basis of inviting to Allah, based on wisdom and good advice, to determine the policy of dealing with them after that, according to the reaction to their inviting to Allah[6], and this is what many legal texts confirm, and the practical biography of the Prophet supports, through his external dealings, as He (PBUH) began by corresponding with the kings and princes, inviting them to Islam; "and this step is considered an important turning point in the history of the Arabs and Islam, not only because the Messenger will unite the Arabs of the Arabic Peninsula under the banner of Islam, but because these Arabs, after

6. Mustafa Mahmoud Manjoud.The Political Dimensions of the Concept of p ,Security in Islam 497.

they embraced Islam and understood the message of heaven, were entrusted with carrying the Islamic Dawah (call) to all of humanity...and the prophetic method in calling leaders and kings indicates what the means of Dawah should be.

So, in addition to calling princes and peoples, the Messenger ,PBUH, chose a new method of preaching, which was to correspond with kings and tribal chiefs; This method of sending letters to kings and princes had a significant impact on some of them converting to Islam and showing affection from the others. These letters also revealed the positions of some kings and princes towards the Islamic Dawah (call) and its state in Medina. Thus, these letters achieved many results, and the Islamic state was able, through the various reactions to the letters, to adopt a clear and distinct political and military approach…"[7].

These messages were united in the purpose of their sending, which was to call for the monotheism of God , the Almighty. He chose for it messengers from his companions who had knowledge and experience, and the Messenger,PBUH, adopted in each message a style of speech that suitable for the recipient. The texts of these letters included the promise of peace if they converted to Islam and the warning of fighting and destruction if they persisted in their disbelief[8].

The Prophet,PBUH, chose to correspond with the rulers and not with the subjects. This is because the rulers in those eras had strong control over their subjects, and there is no doubt that if the leader or ruler accepted the call for himself, it would find popularity in his area

7. Salabi-Ali Muhammad Al. Presentation of Facts -The Biography of the Prophet and Analysis of Events,p405 .

8.Abdulmalik Ibn Hisham, Biography of Ibn Hisham. Vol 4.p 254 .Fid-Abu Al Ibn Katheer, The Beginning and the End. Part 19 .p114 . Mubarakfuri-Al Safye Eddine .313-The Sealed Nectar, p304 .

of influence, because it would ensure the confiscation of the authority, in addition to the ease with which people would take it after him [9].

Thus, these messages are the first starting point for determining the relationship of Muslims with others [10].

The Companions and the Caliphs after Him ,PBUH, followed the same method. They would not decide to fight except after conveying the call to Allah through peaceful means, and giving others the opportunity to achieve peace and security. This was embodied practically in the Islamic conquests under the slogan of the saying of Rabie bin Aamer, may God be pleased with him: "Allah sent us to bring out whomever He wills from the worship of servants to the worship of the Lord of servants, from the narrowness of this world to its spaciousness, and from the injustice of religions to the justice of Islam."[11]

This confirms that the goal of Islam is to spread the goodness it brought to all people, in the shadow of peace and security for all.

Abdul Karim Al-Khatib said: "The message of this nation is not to keep goodness for itself, nor to hoard it when the time comes, but rather to make it a portion with which all of humanity can be righteous"[12]. In confirmation of the hadith of the prophet ,PBUH: "The example of the guidance and knowledge with which Allah has sent me, is like the example of abundant rain falling upon a land. Some of it was pure and accepted the water and grew abundant grass and herbs; but some of it was barren and held back the water. So, God benefited the people thereby; therefore, they drank and gave drink and cultivated, and another group of them took possession of it; It is

9.Muhammad Salam Madkour . Landmarks of the Islamic State, p63.
10. Al-Qwaisi, Hamed Abdul Majid, The doctrinal function of the Islamic state, p 347 et seq.
11. Al-Tabari Muhammad Ibn Jarir. History of Al-Tabari. vol2. p401. Ibn Kathir, The Beginning and the End. Part 22. p117.
12. Abdalkarim, Y. K.Quranic Interpretation of the Qur'an, Vol2. p549.

nothing but flat lands that neither hold water nor produce grass. That is the example of one who has understood the religion of Allah and is benefited by what God has sent me with. So, he knows and teaches. And the example of one who does not raise a head thereby and does not accept the guidance of God with which I have been sent"[13].

This is what the Companions, may God be pleased with them, did. "They did not with hold from anyone what they had of teachings and education, and they did not consider lineage, color, or country in ruling, leadership, and virtue. Rather, they were a cloud that filled the country and encompassed the people."[14]

Thus, conveying the Islamic Dawah (Call) is a duty upon the Islamic state throughout the eras, using all legitimate and available means [15].

Saif al-Din Abdel Fattah Ismail says: "Monotheism, as a formulation that carries the foundations of the cognitive system and the elements of civilizational formation, sees international dealings in its foundation on Call as one of the fundamentals of knowledge and acquaintance, so that no one can be excused for ignorance. The nation of Call achieves the foundations of monotheism in establishing the founding values of freedom and justice, and breadth and ease. The saying of Rab'i bin Amer -"We have come to bring the servants from worshiping the servants to worshiping the Lord of the servants - is a key saying in this regard"[16].

Thus, the relationship of Muslims with others is based on the Call to God, through peaceful means in the beginning. If someone

13. Muhammad Ibn Ismail Al-Bukhari. Sahih al-Bukhari. Vol1. p27.
14. Abu Al-Hasan Al-Nadawi. What did the world lose with the decline of Muslims, p129.
15. Hamid Abdel Majid Al-Qawisi.The Doctrinal Function, p339.
16. Seif Addin, Abdel Fattah Ismail. Introduction to values in a frame of reference for studying international relations in Islam. vol 2, p115-116.

confronts it and prevents its spread, Muslims will move to use force in the face of those who are hostile to them, and are exposed to their call. Thus, the opinion that the origin is peace is closer to the approach of calling to God. There is no peace in the sense of surrender and submission, but rather with practicing the call to God and not by attacking others, so that they may enter Islam by force"[17].

On the authority of Abd al-Rahman ibn Aidh, he said: "When the Messenger of God ,PBUH, sent someone, he would say: Get together and groan with the people, and do not attack them until you call upon .There is not a single person on Earth... without you bringing them to me, this is more pleasing to me than taking their wives and children and killing their men".

Hence, while practicing the Call to God, Muslims adhere to the virtues of Islamic morals and values that attract many people, as happened during the era of Islamic conquests, where the early Muslims set the most wonderful examples of having high morals that made others respect and appreciate them before they knew their religion. If they ask about the source of these morals, they know there is a great religion and a divine school that produces people like these, so this is a reason for them to enter the religion of God in peace and security. "The Companions of the Prophet were distinguished by the fact that they combined religion, morals, power, and politics, as well as humanity in all its aspects and various virtues was represented in them among the world leaders, and they could have led the human nations to their ideal spiritual, moral, and material goal"[18].

These lofty morals and meanings certainly include every human being, including woman, so it is no wonder that they are treated well.

17. Wahbah Al-Zuhayli. International Relations in Islam Compared to Modern International Law, p94.
18. Abu Al-Hasan Al-Nadawi. What did the world lose with the decline of Muslims, p131.

3.2 Jihad for the sake of God is a reaction after conveying the call:

Jihad for the sake of God comes as a reaction after conveying the Call to God to achieve the same goal, but in a different way, this is because the relationship of the Islamic society with all other societies is based on surrender to the religion of God. Therefore, Sayyid Qutb commented on Ibn al-Qayyim's division of the infidels into people of war or people of covenant[19]. He explained that the reason for this division was due to their position on the religion of God and the Call to it [20].

This is confirmed by the hadith of Buraidah, He said: Whenever the Messenger of God ,PBUH, ordered a commander of an army or company, he advised him in his private to fear God, and those with him among the Muslims to do good. Then he said: "fight in the name of God in the way of God. Fight whoever disbelieves in God. Fight, do not deceive, do not betray, do not imitate, and do not kill a child. And when you meet your enemy among the polytheists, call them to three qualities; So, O them, whatever they answer you, accept from them and desist from them, then invite them to Islam, and if they answer you, accept from them and desist from them, then invite them to convert From their home to the home of the immigrants, and tell them that if they do that, they will have what the immigrants have, and they will have to do what the immigrants have to do, but if they refuse to change from it, then tell them that they will be Like the Bedouins of the Muslims, the ruling of God applies to them which applies to the believers, and they do not have anything in the spoils except that they strive with the Muslims. If they refuse ask them to pay the tax, and if

19. Ibn al-Qayyim Aljawziah, Ahkam Ahl al-Dhimmah, persuit by: Subhi al-Saleh, Huose of Science for millions. p 476.
20. Islamic Union of Students. Jihad for the sake of God, pp103-114.

they answer you, accept from them and desist from them, for if they refuse, seek help from God and fight them…"[21].

The Prophet ,PBUH, made jihad the last option required by the universality of the Islamic Call.

3.3 The reality of jihad for the sake of God or war in Islam:

The truth of jihad for the sake of God must be explained first, in order to respond to all the suspicions attached to it by biased enemies of religion, to the point that its release has begun to depict in the minds of many images of killing without control or deterrence...!; Maududi said: "It was the custom of the Franks to express the word jihad as "Holy War" if they wanted to translate it into their language. They interpreted it in a reprehensible way, and were creative in it, and dressed it in a loose garment of camouflaged, fabricated meanings. The matter reached the point where the word jihad became for them an expression of ferocity. Nature, morals, barbarism, and bloodshed, It was due to their tact, the magic of their statement, and their distortion of the bright faces of the truths that whenever the sound of the word "jihad" struck, the image of processions of gathered savages appeared before their eyes…"[22].

3.3.1. Definition of Jihad or War:

before giving the final meaning to the concept of "jihad", we must define it linguistically and technically as following:

3.3.1.1. Definition of Jihad or War linguistically: Jihad means man exerted his effort and energy[23].

3.3.1.2. Definition of Jihad or War technically: The Muslim exerted his energy and effort in supporting Islam in order to please God, and for this reason, he restricted jihad in Islam to be for the sake of God,

21.Abu Al-Hussein Muslim Ibn Al-Hadjaj ,Sahih Muslim, Vol 5. p140.
22. Islamic Union S. P 3,4.
23. Ibn manzour, P708.

to indicate the meaning necessary to achieve legitimate jihad...[24], and this is what the jurists agreed upon and stated.

The Hanafi school of thought defines it as: "Exerting effort and energy by fighting for the sake of God with one's soul, money, tongue, or anything else or exaggerating that"[25].

Ibn Arafa al-Maliki said: "Jihad is fighting of a Muslim to an infidel who has no covenant in order to uphold the word of God, the Almighty, his presence in Him, or his entry into His land"[26].

Thus, the concept of jihad is distinguished by the fact that it is for the sake of God and not to dominate peoples and exploit their wealth. It is not correct to apply other terms to it, such as: holy war or just war, because each term has its own meaning and effects.

3.3.2. Ruling of jihad:

There are types of jihad: jihad with the tongue, with money and with the soul. Jihad is often applied to fighting with the soul for the sake of God, and this is its ruling that it is one of the obligations of sufficiency in normal circumstances if sufficiency is achieved, but it becomes an individual obligation if the infidels occupy an Islamic country, or the imam mobilizes the Muslims. Ibn al-Arabi mentioned the consensus on this, saying: "If the mobilization is general due to the enemy's victory over the estate or his seizure of prisoners, The call was general and it was necessary to go out swift, heavy, and riding, men, slaves, and free people, and whoever has a father goes out without his permission until the religion of God is revealed, the nation is protected, the estate is preserved, God disgraces the enemy and

24. Abdalkarim Zaidan, Origins of Call, p272.
25. Al-Kassani Ala Eddine. The Wonders of Crafts, in the Arrangement of Laws. vol 9. p379.
26. Abu Abdullah Muhammad bin Muhammad Al-Hattab, Talents of Aldjalil to Explain Khalil's Summary. Vol 1. p220.

saves the prisoners, and there is no disagreement about this.."[27].

3.3.3. Rulings and purposes of Jihad:

There are many rulings and purposes of Jihad, among them:

- Islam chose the term "jihad" instead of "war" to distinguish between legitimate and illegitimate fighting, as: "The word "war" was and still is used to refer to the fighting that rages between men, parties, and peoples for personal goals and purposes, and the goals that it aims to achieve such wars are nothing more than personal or social purposes; It does not include any impact of an idea or a victory for a principle. Since legitimate fighting in Islam is not a type of war, it was necessary to abandon the word "war" completely, for Islam does not look at the interest of one nation without another, and does not intend to advance people without people. Likewise, it does not care, little or much, whether this or that kingdom owns the land and seizes, but it cares about it the happiness of humans and their successes. He has a special idea and a chosen practical approach to the happiness of human society and its ascension to the heights of the success..."[28].

- Jihad is not prescribed except by order of the guardian of Muslims, who makes his decisions according to the principle of Shura, which prevents arbitrariness in decision-making unless it is in the public interest or promotes corruption. It should not be an arbitrary decision, as happened in America's war against Iraq, which was launched under the pretext of preventing nuclear weapons. So, many people were killed, and were terrorized in their homes, and an entire country was torn apart. Then it became clear that there were no weapons are existed at all?!. The guardian of Muslims or his appointee shall

27. Abu Bakr Ibn al-Arabi. Quranic Rulings. p 517.
28. Abu Al-Aela Al-Maududi, Jihad for the sake of God, p 11-12. Wahbah, Z. The Effects of War on Islamic Jurisprudence, p 26-27.

assume the leadership of jihad in order to dispose of it, according to the provisions of Islamic Sharia, and what the jurists have decided upon.

Al-Mawardi said: "It is the largest of the special guardianships in terms of rulings, and the most abundant in chapters and sections, and its ruling if it is specific is included in its ruling if it is general.."[29], then He began detailing its rulings in a way that there was not enough space to mention[30], Which indicates that it is not left to the whims of the leaders, but rather is subject to the provisions of Sharia in a way that achieves its purpose.

- Its connection restricts “for the sake of God”; to be distinguished from all types of wars that are covered up with false slogans, then reality contradicts those slogans, while we find that jihad for the sake of God throughout Islamic history had specific lofty goals that it declared, which are what are actually achieved in the reality; "What Islam requires is that if a man or group of Muslims makes and exhausts its efforts to eliminate outdated and false systems, To form a new system according to the Islamic idea, it must be devoid of all purposes, free from every whim or personal tendency behind her efforts, and the souls and valuables it exerts for her goal are nothing but establishing a just system that is based on justice and truth among people... During these great efforts and precious endeavors, it does not occur to him to elevate himself and his clan, take control, and assume the position of immoral tyrants after he removes other arrogant tyrants from their positions"[31], and Al Mawardi said: "...By his fighting, he intends to support the religion of God and nullify the religions that differ from it in order to make it prevail over all religions, even if the polytheists hate it...And he does not intend his jihad to benefit from

29. Al-Mawardi Ali Ibn Muhammad. Royal Rulings, p 35.
30.Al-Mawardi. p 35-54.
31.Al-Maududi. p15.

the spoils, so he becomes one of the acquired ones, not one of the mujahideen.."[32].

- Jihad is a command from God and His Messenger, may God bless him and grant him peace, and is governed by legal rulings that may not be violated. It is not an improvised matter by which people control people's necks. Rather, it is an implementation of the command of God and His Messenger, which does not fall outside the field of achieving justice and preventing injustice that threatens security and safety at all levels.

- Jihad is inseparable from the Islamic values that govern it before it is called for, during the battle and after the battle, and which narrow the circle of the use of force. It is only in the face of those who deserve it among those practice injustice and aggression in order to stop doing so, and submit to God's command, whose goal is to achieve worldly and hereafter security.

- Another security ruling for jihad is Islam's prohibition of surprise and sudden war. Rather, it instructed army commanders and ordered them to declare war on the enemies after giving them a choice of the three things. What is meant by the choice is "to announce to them first that we will respond to their aggression and fighting with war, so as to don't catch them by surprise. Secondly, Islam does not want bloodshed, even for an aggressor. If he stops being hostile to us and enters our religion, then he is one of us. If he stops being aggressive and only wants to remain in his religion, then he has that from us. In order to be safe from its evil, he must demobilize his army and lay down his weapons, The Islamic State is responsible for his defence, and in return he pays the defence expenses, which is the jizya"[33], and anyone who examines these options will find that they include the goal of achieving security for Muslims and others.

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32. Al-Mawardi. p45.
33. Ali Mansour, Islamic law and public international law, p.281.

- If the Muslim leader does not give the enemies a choice between the three things, he must guarantee their blood money for their souls. The Shafi'is believe that the blood money for an infidel in this case is the same as the blood money for a Muslim[34]. This is one of the greatest security legislations in the war, which is unique to Islam and distinguishes it from other international laws, as Islam guarantees the enemy security for himself as long as he isn't informed of the war.

- What indicates that Islam commands always avoiding war if it finds an alternative to that, is that the jurists obligated the commander of the Muslim army, if he called the enemies to Islam, or the covenant, not to fight them after that, but rather to go and pray with his army until when he completed the prayer, he returned and renewed the call, and Al-Sarkhasi believes that it is better. He does not fight them immediately after the call and remain silent, but rather spends the night; That is, he leaves them to spend the night contemplating what is in their interest[35].

- Jihad is not prescribed except in certain cases[36]. It is based on legal evidence and does not deviate from a framework of "the sake of God", as the security aspect of jihad and humanitarian protection is most evident in it, and it is as follows:

The first case: when attacking Muslim countries:

Ibn Jama'ah said: "Jihad, which is an individual obligation, is the one that is obligatory for everyone in particular, and no one is sufficient for it for anyone else. If the infidels descend on a country, then jihad has become an individual obligation for every able-bodied person of that country. So, they must push, prepare for that, in a way

34. Al-Mawardi. p.38.
35. Al-Kassani. Vol 9. p392.
36. Wahbah, Z. System of Islam, p 312. Ibrahim Muhammad Abu Sharia. The Theory of War in Islamic Law. p 34. Abdullah Khalil Hilat. Collective Security in Islam, p 58-59.

that they can. This applies to the master, the slave, the adult, and the adolescent, and it is not necessary to immediately ask permission: the slave from his master, or the child from his father, Nor the debtor from his creditor. Rather, one must hasten to do so as much as necessary, If there is not enough among the people of that country to repel the enemy descending upon them, then everyone who is close must mobilize to, and help them repel the enemy. Then, those who follow them must do so, and so on until sufficiency is achieved. If that happens, the sin is dropped from the rest of the Muslims, and the obligation is not suspended due to lack of riding for whom the distance of shortness is below him .Rather, he must mobilize to them, even if he is on foot and able to walk .Likewise, if the infidels capture a Muslim, we must rise up to them to save him, if we expect his saving by doing so"[37].

The second case: jihad to support the oppressed:

The basis of this is the principle of justice, which requires preventing injustice in all its forms and types from all people - Muslims and non-Muslims - whether they are in an Islamic country or elsewhere, so security is achieved for all of them [38].

If there are Muslims in non-Muslim societies for reasons that prevent them from living in their Islamic societies, we must support and prevent aggression against them, because it has become clear that the goal of jihad is to inform humanity of God's religion, and prevent injustice and aggression, which leads to generalizing security for all people, men, woman, children, elderly and others....Therefore, Mustafa Al-Sibai held a chapter entitled: "The War to Secure World Peace" some of which stated: "As for the war that Islam declares to secure world peace, it is what the Qur'an expresses as jihad for the sake of God, and it is not, as Western fanatics portray it, a religious

37. Muhammad ben Ibrahim Ibn Jamaah, Editing Rulings in the Management of the People of Islam, p 156.
38. Sayyid Kutub. World Peace and Islam, p 156.

war to force people to convert to Islam, that is for me. That is not in the nature of Islam, which declared freedom of belief, but rather it is a battle that Islam is waging to liberate the nation from external aggression, and to secure religious freedom and social justice for all people. So, repelling strife, which is aggression, and the salvation of all religion belongs to God, that is, religious freedom for all people. They are the goal at which fighting in Islam ends. If the enemy stops aggression, Regarding the nation's temptation in its religion and belief, fighting is not permissible, but if they stop, then there is no aggression except against the oppressors..."[39].

4. Manifestations of protecting woman in war in Islamic law:

War , jihad , in Islam is based on moral values and principles, fundamentals and purposes, which is excluded in the principles of building international foreign relations in contemporary thought, as "some may believe, given the essence of the political phenomenon and its centering around the idea of power, that its attachment to the issue of values is marginal, if it is not non-existent or separate, and if Values must be studied separating the aspect that represents political values from the aspect that represents moral values is one of the matters planned by a large movement, Its origins go back to the decade of "Machiavelli's Father of Political Science" Machiavelli Nicola is: an Italian political thinker and philosopher during the Renaissance. He was born in 1469. He became the main figure and founder of realist political theorizing, which later became the backbone of political science studies. He took force as a means to develop a theory in colonial policies, he believes that a state that does not expand at the expense of others is vulnerable to the expansion of other states at its expense, Hence, the colonial policy becomes permanent for the state and not temporary..., His most famous book

39. Salih Ibn Abdelaziz Al-Shikh. This is Islam. p 18 et seq. Muhammad Abdullah Al-Samman. Islam and the International Security, p 146-148.

was “The Book of the Prince”. He died in 1527 AD[40], and the emphasis on the necessity of separating moral values from political values, and this is evident in a number of ideas.."[41]. While a Muslim - based on the doctrine of monotheism - adheres to virtuous morals in his dealings with others in his dealings with the non-Muslim warrior, according to the system of values that are inseparable from the Muslim personality in peace and war, "the Muslim community proceeds in its relations with other societies, exempt from the narrowness of hand in taking measures that provide it with the most successful paths to empowerment on earth, and achieving the rank of cultural witnesses. Whatever the forms through which these measures are embodied, such as jihad, concluding treaties, etc., However, this does not prevent the necessity of such forms coming in accordance with the requirements of monotheism, including adherence to the value approach that Which imposes on everyone who adopts it - that is, monotheism - his identity in life, such that it is not permissible to sacrifice the values deduced within this approach except in cases in which there is no alternative except through temporary sacrifice of them, and these are cases governed by general fundamentalist rules such as harm is removed, and harm is not disappeared by harm, and necessities permits prohibitions, necessity is estimated by its extent, and the unpardonable in means is forgiven in purposes...."[42].

4.1. Aspects of protecting civilians in general:

In modern times, the rules and principles known as international humanitarian law have been codified, especially within several agreements, the most important of which are the four Geneva Conventions of 1949, particularly the third one, which stated: "Persons who are not directly participating in hostilities, including members of the armed forces, and those unable to fight due to illness,

40. Saeed Saba. Philosophy, Terminology and Flags, p165. Seif Addin p 35.
41. Seif Addin. p 34.
42. Manjoud, p 510.

injury, detention, or any other reason, shall be treated humanely without any adverse distinction based on race, color, religion, belief, sex, birth, wealth, or any other similar criterion"[43].

Article 51 of the Additional Protocol to the 1977 Geneva Conventions states: "Civilian populations and individual civilians enjoy general protection against dangers arising from military operations, and to make this protection effective, the following rules must always be observed, in addition to other applicable international rules…"[44].

But the remaining issue is the failure of international legal rules to actually protect civilians during armed conflicts, and there are many real-life examples of this[45], while a Muslim is obliged to protect civilians because virtuous ethics are an inseparable part of his religious beliefs and practices in both war and peace, as shown below:

-Don't the weak and innocen attackt woman, and children, priests in their churches, the monks in their hermitages, the elderly he sick and anyone who has retired from fighting or whose disability prevents him from being a fighter, unless one of them participates in the fighting by saying, deed, or opinion. The origin of this is what was narrated that when the Messenger of God commanded an army or company, he advised him and his family to fear God, and those who were with him well, then he said: " Fight in the name of God, for the sake of God, fight those who disbelieve in God, Invade, do not betray, do not mutilate, and do not kill a child.."[46], and the Companions after him applied his teachings.

43.International Committee of the Red Cross. Fourth Geneva Convention 1949. Article 3.
44. The Geneva Conventions, (1977). Article 51, Additional Protocol I to , .
45. International Protection of Woman During Armed Conflicts Between Legal Codification and Implementation Challenges, Netira Atiq, Journal of Law and Political Science, University of Khenchela, Vol. 12, No. 02, 2025, pp. 366-377.
46.Muslim .Book of Emirate .Chapter "The Imam's Command of the Princes . vol3.p1356 .

Malik narrated on the authority of Abu Bakr that the prophet, PBUH, said: "..You will find people who claimed that they had kept themselves for God, so leave them and what they claimed, that they had kept themselves for Him...Don't kill a woman, or a boy, nor an old man.. "[47], Zaid bin Wahb said: "Omar's letter came to us and it says: 'Do not go to extremes, do not betray, do not kill a child, and fear God regarding the two successes"[48], there is no fighting except for those who want to fight while thousands of children and innocent people are killed in the wars of this era, and by the most horrific technological means, phosphorus bombs, as happened in Gaza, through no fault of their own, and in full view of the international organizations which claim to maintain security and peace, but do not lift a finger when the victim is a Muslim?!

- **Prohibition of mutilating the dead:** It was narrated that the Messenger of God forbade mutilating[49], even if the enemy did it to the Muslims, as happened in the Battle of Uhud with Hamza bin Abdul Muttalib, and other martyrs[50], and Imran bin Husayn, may God be pleased with him, said: " The Messenger of God did not give us a sermon except that he commanded us to give charity and forbade us from mutilating"[51]. so, even the dead have the right in safety, out of respect for their humanity and in honor of them.

- **Good treatment of prisoners:** This is by honoring them and prohibiting harming them. It has not been proven from the Messenger that he inflicted slavery on a prisoner. Rather, it was known that he

47. Malik Ibn Anas. Al-Muwatta. Book of Jihad. Chapter "Prohibition of Killing woman". vol 2. p 447.

48. Al-Bayhaqi, Sunan al-Bayhaqi al-Kubra. Book of Biography. chapter "Abandoning fighting. Vol 9. p91.

49. Aboudawud Sulaimene. Sunan Abi Dawud.Chapter "What Came in the "Fight.vol 4.p 229. Tabarani, vol-Al 2.p 403.

50. Ahmed ibn Hanbel,"Aliyah-Musnad Abi Al" .vol 5.p 135. A,Tirmidhi-l. Sunan ANahl-Tirmidhi, Book of Interpretation, chapter "And from Surat An-l .vol 5. p 299.

51. Ahmad, Hadith of Imran bin Husayn. Vol 4. p 429. Al-Tabarani. Vol 18. p 171.

released the slaves of Mecca and Banu Al-Mustaliq[52], and Hunayn. He freed the slaves he had from pre-Islamic times, and one of the manifestations of their good treatment is that Abu Uzair bin Omar narrates: "I was among the captives on the day of Badr, and the Messenger of God, PBUH, said: "Advise the captives well' And I was with a group of Ansar, and when they served their lunch and dinner, they ate dates and fed me bread, by the will of the Messenger of God, PBUH"[53], and in all of this there is confirmation of Islam's keenness on security, even for the enemies who came with the intention of fighting the Muslims, but they fell into the grip of them. When the Messenger of God wounded the captives of Banu Al-Mustaliq, Juwayriyah, the daughter of Al-Harith bin Abi Dirar, fell into the arrow of Thabit bin Qais. So, she wrote him on herself, and she was a beautiful woman. So, she came to the Messenger of God to seek his help in writing it. By God, it was only when I saw her at the door of the room that I hated her and said: He will see something like what I saw. When she entered upon the Messenger of God, she said: "O Messenger of God, I am Juwayriyah bint Al-Harith bin Abi Dirar, the master of his people, and a calamity has befallen me that was not hidden from you. So, I fell into the arrow of Thabit bin Qais, and I wrote for myself, so help me in my writing". The Messenger of God ,PUBH, said: "Is there anything better for you than that?" She said:"And what is it?" He said: "I will perform your writing on your behalf and marry you." She said: "Yes, O Messenger of God, I did. So,the Messenger of God did so, and the news spread to the people that the Messenger of God had married Juwayriyah bint Al-Harith. So, the people said: In-laws of the Messenger of God. So they sent what they had of Banu al-Mustaliq. By marrying her, he freed one hundred members of the household from Banu al-Mustaliq. I do not know of a

52. Al-Mubarakfuri. P 287.
53. Al-Tababrani, Vol 22. p 393.

woman who was a greater blessing to her people than her[54].

- Don't destroy money, cut down trees, or demolish homes without the need required by war: Abu Bakr used to advise his soldiers: "...And do not cut down a tree or destroy a town.."[55], while prohibiting the policy of starvation in war, and all of this indicates that the principle in Islam is to spread peace and security to the worlds, and fighting is only an exception for those who deserve it, and who prevent God's creation from knowing His religion and enjoying His tolerant rulings.

4.2. Aspects of protecting woman in particular:

Islam granted woman treatment that suits their nature both in peace and in war, and this is what mercy and divine justice require. This is evident in the following:

- Not to obliging her to fight except in the event of a general: Mobilization: Aicha, may God be pleased with her, said: "O, Messenger of God, I said that woman should wage jihad? It is a predicate in the meaning of the interrogative, he said: "Yes, jihad without fighting, Hajj and Umrah"[56], and this does not mean that it is not permissible. "As for the permissibility of jihad for them, there is no evidence in the hadith that it is not permissible. Al-Bukhari added this chapter to the chapter on woman going out to fight. Muslim narrated from the hadith of Anas that Umm Sulaym took a dagger on the day of Hunayn and said to the Prophet, PBUH, "I took it, if one of the polytheists approached me, his stomach would be cut open, this indicates that it is permissible to fight, even if there is evidence that she only fights as a defender… and in Al-Bukhari there is evidence

54. Aboudawud, Chapter on Selling Offices. Vol 4. p 34.
55. Malik. Book of Jihad . Chapter "Prohibition of Killing woman".vol 2.p447 .
56. Muhammad Ibn Yazid Ibn Majah. Sunan Ibn majah. Vol3. p248.

that their jihad, if they attend its situations, is watering water, treating the sick, and handling arrows"[57], while we find among the regimes now those who recruit woman just like man without taking into account their nature and weakness. which exposes them to killing and various sexual crimes[58].

- **Hfight without her permission er sons should not go out to**: on the authority of Abdullah bin Amr, may God be pleased with them, who says: A man came to the Prophet ,PBUH, and asked his permission to wage jihad. He said, "May your parents live", he said: yes. He said, "In them so you struggled"[59]. It was narrated that Abu Jahmah came to the Prophet, PBUH, and said, "O Messenger of God, I wanted to invade and I came to consult you. He said, "Do you have a mother?", he said yes. He said: "Abide by her"[60], and this indicates the vast mercy that characterizes the religion of God, the Almighty, The great status of woman, mothers, in Islam means that protecting and taking care of them comes before fighting in the way of God when there is a contradiction.

- **Confirming her neighbourhood**: the Prophet ,PBUH, cknowledged the safety of Umm Hani and said: "..We have rewarded whomever You have rewarded, O Umm Hani"[61].

As for the woman who is on the side of the conflict, she is treated as acivilian unless she takes up arms,as mentioned earlier,in addition to the following matters:

- **Don't force her to do something other than her religion:** "There

57. hammadMu Ibn Ismail ASan'ani-l. Paths of Peace. vol 4.p42 .
58. Netira Atiq. (2025). International Protection of Woman During Armed Conflicts Between Legal Codification and Implementation Challenges. Journal of Law and Political Science, University of Khenchela. Vol. 12, No. 02. p.371
59. Bukhari-Al . Vol 4. p 59.
60. Al-nassai Ahmed ibn Shouaibe. Sunan Al-nassai. Part 6.p11 .
61. Al-bukhari. Book of Tribute. chapter "The Safety of womanand Their Neighborhoods".vol 4. p 100.

is no compulsion in religion. Righteousness has become clear from error". (Al-Baqarah: 256).

- Don't take tribute from her: Ibn Rushd said: "...They agreed that it is obligatory with three descriptions: masculinity, puberty, and freedom, and that it is not obligatory for woman, nor if it is a substitute for killing, and killing is directed towards adult men..."[62].

- Treating her well, even if she is an infidel: He ,PBUH, said to Asma when she came to him asking his permission regarding the relationship with her polytheist mother: "Yes, connect your mother"[63].

- Preserving her life: on the authority of Ibn Omar, may God be pleased with them, who said: A woman was found murdered in some of the battles of the Messenger of God ,PBUH, so the Messenger of God, PBUH, forbade the killing of women and boys[64].

- If she is a prisoner: her good treatment should not affect her honor,and she should not be tortured or humiliated, which is subject to the provisions for dealing with prisoners in general.

Modern international humanitarian law recognizes special protection for woman in addition to the general protection of civilians in many legal texts[65]. However, the mandatory implementation of

62. Muhammad Ibn Rushd, The Beginning of the Diligent and the End of the Frugal.Vol1 .p403 .

63. Bukhari, Book of Gifts and Their Virtues-Al.Chapter "Accepting a Gift from the Polytheists".vol3 . p 164.Muslim, Chapter "The Preference of Alimony and Charity to Relatives".vol 2. p 696.

64. Ibn Qayyim.vol1.p55 .

65.Abdalkarim Jamal. International and national efforts to protect woman according to the provisions of international humanitarian law. Studies and Research. Vol 4. No 7. p92-105. / Ziad Tarek Khudair and Saif Jassim Mohammad. (2022). *children and* Special protection for *women in the Geneva Conventions and their Additional Protocol*. Journal of College of Education. Vol 48. No1. p 382-384.

these laws and their activation often prevents their actual realization on the ground, especially when it comes to Muslim woman. Article76 of the Aditional Protocol states.

1- Woman ecial respect and protectedmust be treated with sp, particularly against rape and forced prostitution, and against any other form of indecent assault.

2- Priority should be given first to mothers and moth Of young children whose hildren depend on them, whether they are captured detained, or imprisoned for reasons related to the armed conflict..

3- The parties to the conflict try as much as possible to avoid sentencing pregnant woman or mothers of young children, who their children depend on to death for a crime related to the armed conflict,and the death sentence must not be carried out on such woman[66].

Thus, it becomes clear that woman in Islam has her rightful place, whether in peace or in war, which the most prestigious humanitarian and international organizations have not achieved, and reality is the best evidence of that.

66. the Geneva Conventions. (1977), Article 76, Additional Protocol.

5. Conclusion:

The most important findings of the research are as follows :

- Woman has a great place in Islamic law, whether it is in peace or in war.

- Islamic law is keen to protect humanity in general, and civilians in particular, including woman.

- The protection of woman in Sharia law has a broad concept that includes preventing harm to her; in her religion, soul, mind, honor and money.

- Protection in Islam is based on moral principles, foundations and values, which makes it a necessary matter that cannot be undone.

- The concept of legitimate jihad differs from war in terms of meaning, goals and objectives, and this in turn affects various forms and manifestations of protection.

- Islamic legislation exceeds all international organizations and human rights bodies that claim to preserve human rights in provenance and application in peace and war.

- International humanitarian law recognizes the right to protection for civilians in general, and for woman in particular.

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