



Family Rights during International Armed Conflicts with an Emphasis on Islamic International Humanitarian Law

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Abstract

International humanitarian law is a legal protocol that prohibits and limits the parties of international conflicts, which, without the legitimacy of resorting to force, tries to reduce the negative effects of conflicts. The current research is carried out in a descriptive-analytical way, to investigate the feasibility of paying attention to the family during armed conflicts and inferring the rights to support the family during such conflicts. For this purpose, research information was collected from written sources in the field of law. Investigations showed that the family, as an independent whole, is not a subject supported by international assemblies and their normative and procedural measures, but in some existing international documents, one can find small but important requirements in supporting the family during armed conflicts. This is while in Islam the theory of humanitarian rights is proposed with regards to the family. Similarly, the findings showed that humanitarian rights related to the family can be presented and that some of them can be used to limit and prohibit armed conflicts, such as the right to the human genome. Some of these rights also entail a compensatory nature, such as the right to have access to the bodies of the deceased or the right to know the truth.

Keywords: Rights, International humanitarian law, Family, Armed Conflicts, Islam

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*This research paper is dedicated to all those families of missing martyrs and to our brother, Haytham al-Zurqa', who has been deprived from seeing his family for many years because of the Saudi Arabian invasion of Yemen.

Introduction

International humanitarian law is a set of rules which seek to limit the effects on victims of armed conflicts. These rules, regardless of the legitimacy of the war, try to call humanitarian requirements into the war process (Stewart 2003). International humanitarian law related to the family reduces human suffering and the destructive scope of war, and its ideal concept is to ensure respect for human dignity (Forsyth, 2017). Despite this scope, the family, as an independent, rights-possessing entity, has not been paid sufficient attention to as a beneficiary in the field of humanitarian law studies. Failure to pay attention to this category by scholars has endangered this important institution in the field of hostilities. Though it is possible to infer the theory of family from Islamic texts, the set of humanitarian rules has only made passing remarks in this regard. In humanitarian law documents, the term family rights is rarely mentioned during conflicts. For example, Article 27 of the 4th Geneva Convention of 1949 states: "Protected persons are entitled to their family rights in all cases". So, can the family be covered by humanitarian rights as an independent subject? If so, then what instances of protective rights does the family have in the international system of humanitarian laws, and in the Islamic system of humanitarian laws, to reduce the effects of war, during or after the conflict?

Research Theoretical Framework

Family as a Subject of International Humanitarian Law

Family is a very broad concept. It includes people who live under the same roof as members of a family or have close relationships with each other (Tidball-Binz, 2013). The family is taken into consideration because it is a legal person and is subject to laws and rights. Islamic Jurisprudence considers the criterion of a legal person to be the ability to possess rights (Āqā Mahdavi, 1393 SH). In this instance, it is proving the phenomena using the effect. Hence, the family's eligibility for bequest and endowment proves the legal personal status of the family. The family can also be examined from a sociological point of view. In fact, accepting an identity in the name of the family as a subject matter of rights depends on accepting the principal reality of the family. On the

contrary, there is a view that claims: "The relationship between a family and its members is like the relationship existing between a whole and its parts. It is the members that have a say in weighing the rights". In this definition, family is an abstract mental construct that lays no claim to values and rights.

Based on the principality of family theory, the family is a real entity that imposes itself on the supporters and authors of humanitarian law and has an identity independent from its members. Accordingly, it cannot be created or dissolved based on the interests of the authors but must be supported as a fact in terms of rights. The reason for the principality in this approach is the psychological and conscientious aspect of the family, which is different from the conscience of family members. That is why each person loses their individuality to some extent concerning this group, and even based on this, the family considers certain rights for itself. Historically, the concept and identity of the family existed before the individual. The objects did not belong to individuals but to the group, i.e., family, tribe, etc.

Regardless of the previous two approaches, the right does not need a real person as its subject, because it is not a genuine external accident, and just as the role of the right is conventional, so too can the subject that claims it, i.e., it can be a legal person, such as the right of the poor to zakat. Some rights of women are related to family rights, such as pregnancy and birth rights, i.e., prenatal and postnatal care (Grover, 2009) or the right to remain neutral and be protected (Machel, 1996), which can be pursued under the principle of classification of non-militant civilians in Islamic Jurisprudence. The present research aims to analyze the rights of the family, as belonging to the family, during armed conflicts. The rights presented in this article are categorized into different dimensions, but the topic in question is the classification of rights into rights that limit and prohibit conflicts and those rights that are compensatory.

Humanitarian Law for the Family; Laws Limiting or Preventing Conflicts

Given their limiting and preventive characteristics in international armed conflicts, humanitarian laws impose rules of duty on the parties involved in the conflict, which include the right

to freedom, the right to asylum, and the right to protect and maintain a family's honor. Therefore, these rights are either considered as an obstacle in starting a conflict or create limits and restrictions in a started conflict.

The Right to the Human Genome

The set of hereditary information of each person (what is passed on from one's parents) or the complete set of DNA of a cell is called a genome (Shujā', 1391 SH). The right to the genome can be referred to as being a family right that includes the collection of hereditary information of a family. The basis of this right is the fact that the genetic material of a family is the common essence and legacy of that family, and therefore, it is not only the legacy of the family but the family itself. Recognizing the genome as a shared family heritage means that the international community must ensure that the genome should not be owned or controlled by any individual or group (Gros Espiell, 1998). Of course, the genome as a whole is considered to be under human ownership, which does not mean the negation of family ownership, but it means that the use of this information should not conflict with the interests of humanity.

The family's right to genomic information is a right that every family member inherits from the moment of conception. They grow with it, change with it and move with it. On this basis, the human dignity of the heirs must be respected while benefiting from it. This stipulation prohibits biological wars based on genetic engineering, including the use of toxic bioterrorism and biological weapons against families. Nevertheless, biological research on the human genome and its misuse, which runs contrary to human dignity, and the intention of making it into a weapon has always been controversial and a hotly debated subject. The Universal Declaration of the Human Genome and Human Rights (UNESCO-1997) has imposed several restrictions on governments, such as the seeking of permission for all research, the confidentiality of genetic information, and the right to fair compensation for genome damage. Of course, the most important condition is the prohibition of using genome information against human honor and dignity (Jānūs, 1383 SH). Although collaborating scientific research on the family genome to the

observance of human dignity and fundamental rights, makes it illegitimate to use this information for weapons purposes, this declaration is a non-binding document. Nevertheless, the lack of objection to it or the right to condition the approval of this declaration can be a reflection of the underlying principles of the emerging international law, or the creation of soft rights for the development of customary law and the establishment of general rules in this case. This view prevents the family genome from being turned into a military tool for expansionist purposes and the violation of human dignity during biological conflicts (Knoopers & Cranley 1999). This possibility can be used as a basis for prohibiting the transfer of genetic information by the family or allowing them to give open access to their genetic information.

According to Article 32 of the Fourth Geneva Convention, Article 11 of the First Additional Protocol, Articles 12 and 50 of the First Convention, Articles 13 and 130 of the Third Convention and Articles 32 and 147 of the Fourth Convention, medical, scientific and biological experiments to obtain scientific results that are not related to the health of the enemy are prohibited. Genetic knowledge is considered to have a broad capacity within biotechnology to create intelligent discrimination based on genetic patterns. Discrimination in access to treatment facilities or prioritizing access to humanitarian rights facilities during conflicts based on genetic information, without regard to the principle of human dignity, is something that can seriously violate the basic rules of humanitarian rights. Genome protection can be proposed in the form of a ban on genocide (according to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide), where the goal is to destroy families belonging to a particular race or religion. Among them, we can mention the massacre of Armenians during the First World War between 1914 and 1916 by the Ottomans and the massacre of Jews by Nazi Germany. This kind of crime is considered genocide in the statutes of international criminal courts. The draft of the 1947 Convention (Article 1) refers to biological genocide and limits the imposition of measures to prevent birth. Such actions can be pursued with the prohibitions and punishments that have been proposed in Islamic Jurisprudence under the title of corruption of agriculture and lineage. To explain this further, the manipulation of human genetics for treatment is one of the cases that the majority of Islamic jurists

have deemed permissible based on proof. Among these proofs are the principle that actions are primarily permissible, that these actions do not conflict with God's creational nature, and that no proof exists to show the forbiddenness of change in God's creation by this act. Furthermore, restrictions have been placed on the permissibility of this act, such as that the result of the changes must not be ambiguous or even possibly create a defect (Muntazari Najafābādi, 1385 SH) or that the permissibility is conditional on it i.e., the change, having positive effects (Makārim Shīrāzī, 1387 SH). The use of human genomes for conflicts and the destruction of the human race lacks positive effects and benefits considered by jurists. In this case, there is no doubt about the prohibition of such actions under the title of prohibition of corruption in the noble verses of the Glorious Qur'an. In fact, corruption is the expulsion of something from the state of moderation and integrity (Mousavi Sabzavāri, 1409 AH, 3/216) or a disturbance in the nature and order of the creation and development of things, such as legislative corruption, the killing of souls without having just cause to do so and doing injustice to others. (Mustafawi, 1380 SH, 8/384) Causing corruption on earth is also prohibited by God and is subject to the jurisprudential rule of causing corruption on earth and rebelliousness (Makārim Shīrāzī, 1374 SH, 2/74; Hilli, 1412 AH, 15/322).

The Right to Asylum and the Prohibition of Forced Displacement

Due to the escalation of forced migration, war has unpleasant consequences on the fate of the family, such as the disintegration of the family and ignorance of the fate of its lost members during migration. In international law, it is possible to simultaneously apply the 1951 Convention on the Rights of Refugees and humanitarian laws conventions (Article 5 of the 1951 Convention on the Rights of Refugees), and in cases where other parties cannot or do not want to respect humanitarian laws, the protection of refugees is another requirement. According to Article 1 of the 1951 Convention, a refugee is a person who resides outside his country of normal residence due to a justified fear of persecution for reasons related to race, religion, nationality, membership to certain social groups, or having certain political opinions in his country. Because of the aforementioned fear, he does not want to or cannot return to his country.

It seems that the condition of being a refugee and enjoying the rights mentioned in the 1951 Convention is the validity of the term of persecution and its reliance on one of the aforementioned reasons. If a person simply flees from war-torn areas, the 1951 Convention will not apply to him. Although the concept of persecution is not defined in the 1951 Convention, it is true that some illegal and severe acts, such as direct threats to a person's life or freedom (Jaquemet, S. 2001) and violation of the inviolable rights of individuals, constitute persecution. The International Court of Justice, with regards to the former Yugoslavia, concerning the Kuperskic case, has also extended persecution to any form of serious violations of human rights (with similar reasons in the 1951 Convention). The possibility of persecution due to the nationality of the family involved in hostilities or the violation of their inviolable rights in the war zone can trigger the activation of the 1951 Convention on them.

Violation of this right has been termed as the most serious crime concerning society as a whole (Article 5 of the Rome Statute of the International Criminal Court) and as an aggression that deeply shakes the conscience of humanity (Preamble of the Statute) and may be considered a war crime in the courts.

Article 49 of the Fourth Geneva Convention also prohibits the deportation and relocation of the inhabitants of the occupied territory, and the only exception it considers is the deportation of the inhabitants due to military and security considerations. Article 58 of the First Additional Protocol also obliges the states involved to remove civilians from the vicinity of military centers and military targets (within the territory). The Statute of the International Criminal Court for the former Yugoslavia in paragraph "c" of article 2 and paragraph "d" of article 5 and the Rome Statute in paragraph "d" of article 7 and part 7 of paragraph "a" and part 8 of paragraph "b" of article 2 lay stress on the criminal nature of this violation. At the same time, one of the shortcomings of the international humanitarian law system, including the Fourth Geneva Convention, is that it does not mention the prohibition of deporting foreigners and their families who live in the territory of one side of the conflict. These families must have the support of their respective governments, but before the respective government takes action, forced migration cannot be allowed by the government involved in the conflict.

In Islam, offering protection to a refugee family fleeing war is a legitimate matter and is acceptable if there is expediency, goodwill and no espionage. (Hilli, 1414 AH, 9/86) It is obvious that maintaining the health of civilians, as well as the integrity of the family, are among the interests that can be taken into consideration by the Islamic ruler. According to some scholars, the condition of accepting asylum is that there is no harm to the state. The proposed legitimacy and permission provide a suitable basis for preserving the family and its existence during armed conflicts. In the Islamic rules of asylum, if the immigrants enter the Islamic land even without truly believing that they will receive asylum, they will be safe until they are returned to their own land (Hilli, 1414 AH, 9/105). It is understood from the necessity of providing security for the immigrants and non-necessity of returning them to their homeland that, in some cases, it will not be permissible to return the refugee from the peaceful (Islamic) land to their native land due to the war and the lack of security conditions.

The families of foreign nationals living in Islamic countries involved in hostilities must also be fully protected against internal and external attacks. ('Umar Madani, 1984). Regarding the peak of this protection, it can be said that if the government of the refugee has a captive, the captive cannot be exchanged for the refugee unless the refugee consents. If the government of the refugee threatens the Islamic government with force, the refugee should not be surrendered; because it is against the security that has been granted to him (Al-Muhayri, 1995).

Article 12 of the Cairo Declaration of Islamic Human Rights states:

According to Sharia, every person [Muslim or non-Muslim] has the right to move and choose a place to stay inside or outside of his own country, and if he is oppressed, he can seek refuge in another country, and the host country is obliged to protect him until a shelter is provided for him.

Article 31 of the 1951 Convention also states that the contracting states will not punish refugees who, for security reasons, have entered their territory or are staying there without permission, provided that they are immediately introduced to the relevant authorities and they have convincing reasons for their illegal entry or presence. (Article 33 of the same convention).

The Right to Maintaining Family Honor

In addition to severe psychological effects, sexual violence destroys the honor and dignity of the family in society, and even after the end of the war, its effects will still remain on the body and soul of the victims (Ramazan Nargis, 1383 SH). Social frustration, irreversibility to social life, as well as the unknown identity of children born from this type of violence and the creation of illegitimate families are among the consequences of sexual violence in conflicts. According to the report of the European Union's fact-finding committee, more than two hundred thousand Muslim women became pregnant during the armed conflict in Bosnia and Herzegovina as a result of the aggression and were forced to give birth to Serbian children against their will (Pāryāb, 1387 SH). The research related to the 1994 conflicts in Rwanda indicates that most of the family members who were under the age of twelve were massacred or raped, and about 20,000 people were also not spared from this type of violence in the conflict related to the former Yugoslavia (Machel, 1996).

The international community practically did not pay attention to this phenomenon in wars and did nothing to support the victims of such behaviors (Mitchell, D.S., 2005). As a document, the Declaration of Brussels (1874) affirmed the right to dignity and honor in Article 38: "Family honor and rights shall be respected". In all the Hague Conventions, only Article 46 of the 1907 Convention vaguely and indirectly prohibits the violation of family honor, but in the Fourth Geneva Convention of 1949 (Article 27) and paragraph 1 of Article 76 of the First Protocol and Part "E" of paragraph 2 of Article 4 of the second additional protocol explicitly supports family honor. The International Criminal Court has also provided several protections for this right in the rules of procedure and evidence, such as not needing to confirm the testimony of a victim of sexual violence, protecting witnesses and considering protective measures, security arrangements, counseling and other appropriate assistance for them, compensating for their damages, etc. It also established a trust fund for the victims and their families. In Islam, it is not permissible to violate family honor as a method of war, even in the case of reciprocation (Hurr 'Āmili, 1409 AH, 29/40).

Humanitarian Laws related to the Family; Compensation Laws

Humanitarian laws with a compensatory feature specify tasks for the governments involved in the conflict to reduce or compensate for the amount of emotional and material damage done to the family. Among these rights, we can mention the right to know the truth, the right to family reunification, and the right to access the bodies of the deceased.

The Right to Know the Truth

The right to find out about the past events of family members is one of the other rights of the family during international armed conflicts (Salado-Osuna, 2005). On the one hand, the right to know the truth should be considered as having a collective nature, which includes the right of society to access the basic information of the victims, and on the other hand, it should be considered as having a private nature, which includes the right of the family to know about the events that happened to their loved ones. This right is considered a basic human need in the resolution of the United Nations General Assembly adopted in 1974 and one which must be fulfilled as much as possible. This right has been emphasized by many other documents, including the 2002 resolution of the United Nations Human Rights Commission and several resolutions of the International Conference of the Red Cross and Red Crescent (approved in 1986, 1995 and 1999).

The right to know the fate of family members is a form of compensation for the first-degree dependents. It obligates governments to investigate the events where the fate of the family or its missing persons is unclear. Not knowing the fate of loved ones is effective in activating the legal system of the absentee (with issues such as the status of the absentee's wife, his property, etc.) in Islamic jurisprudence and the value system of other religions. On this basis, the necessity of searching according to some jurisprudential readings or the necessity of waiting for the absentee, represents the right to know the truth. In the Third Geneva Convention, in line with the right to know the truth, several things have been mentioned among the rights of prisoners, including the following: - The right to be informed of a new postal address in case of a relocation of the detention center and the right to inform the family about it (Article 48 of the Geneva Convention

regarding dealing with prisoners of war in 1949), the right to inform their family about their captivity, illness and relocation (in their native language) and the need to send these cards quickly (Article 70), the right to write a will and send it to the sponsoring government after death (Article 120), the need to prepare death certificates and send them to the Prisoners of War Information Office. The certificates must contain information about the place, date and cause of death, and the place and date of burial and all the necessary information for identifying graves (Article 120)

Of course, there are certain observations about the jurisprudential scope of the right to know the truth. The impermissibility of exhumation (Hilli, 1412 AH, 7/411), the prohibition of mutilation (Ḥurr ‘Āmili, 1409 AH, 15/58), the prohibition of cutting off the body parts and the obligation to bury the body immediately (Ḥurr ‘Āmili, 1409 AH, 29/329) are rules that may restrict knowing the truth. However, this matter needs to be considered further, as this right can be placed under some necessary cases that permit exhumation (Ṭūsī, 1407 AH, 1/730). In such cases, judicial autopsy results are followed. Performing an autopsy, to determine the cause of death, determining the amount of blood money that must be paid and identifying the identity of the corpse, all help to prove the rights of the victim and his survivors. Also, an autopsy (to find the truth) does not mean mutilation. According to the prophetic traditions that are in this chapter, including the *mursala*¹ of Muḥammad bin Sinan (Ḥurr ‘Āmili, 1409 AH, 29/327), the criterion for the ruling is the sanctity of the dead. Therefore, in cases where the autopsy has a rational or religious justification, the intention of insulting will not apply in any way. From the lexical point of view, the meaning of mutilation is different from that of autopsy. In mutilation, the cutting of limbs is done out of hatred and revenge, but in autopsy, the goal is to claim the rights of the survivors.

The reasons for urgent burial do not include an autopsy to know the truth and are about situations where either the truth is known or the enemies take the bodies out of the battlefield. In addition, regardless of the examination of the chains of traditions, it is inferred that it is desirable to hasten the burial of the dead, and not

1. A prophetic tradition missing or the lacking a transmitter in the chain of narration (Ed.)

obligatory. It can also be said that if delaying the funeral of the deceased causes insult to him [and harm to his family], this is forbidden. It is not obligatory to honor the dead in any way, but it is enough that the dead are not insulted or humiliated. (Mu'min Qummi, 1415 AH). Therefore, honoring the dead may consist in handing it over [to the competent authorities] or enforcing the aforesaid right about it.

The Right to Family Reunification

Contrary to the right of families to know the truth about the fate of their missing loved ones and other facts, this right includes the exchange of family news, registration, tracking the status of people to prevent their disappearance, and finally trying to reunite family members. The reunification of family members separated by war and conflict requires a long administrative process through the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration. Before reuniting family members, the International Committee of the Red Cross must ensure that this move is in the best interests of those involved in the conflict. With the consent of the family members, this organization examines their family relationships and also obtains the required permits and visas from the governments involved in the war and transit countries. Meanwhile, priority is given to family members who need special support, such as released prisoners and close relatives (Sassoli, & Louise Tougas, 2002).

The International Committee of the Red Cross Family Relations website¹ also helps families who have left their homes due to fear and are scattered in different areas to reconnect with each other. One can start using this public and easy website by entering the names of the relatives one is looking for. Then, gradually, the information of those who are confirmed to be alive will appear on the website. Based on the rules of humanitarian law, several requirements have been established in this regard, some of which have a preventive aspect whereas others have a compensatory one. Among them are:

- Prohibition of any transfer of children to a foreign country (unless required by emergency or health and security reasons)

1. www.familylinks.icrc.org

(Article 78 of the First Protocol and Article 4, Paragraph 3, Part "E" of the Second Protocol of 1977 and regarding the duty of the occupying government, Article 50 of the Fourth Convention)

- Identifying and determining the identity of children under 12 years of age who were orphaned or separated from their families due to war and their return to their families (Article 50 of the Fourth Convention);
- The members of a detained family, especially parents and their children, will be together in one place unless reasons, such as health, make it necessary to separate them temporarily. Also, governments undertake to facilitate the reunification of families separated due to armed conflicts in every possible way (Articles 82 and 74 of the Fourth Convention, Article 75, Paragraph 5 of the First Geneva Protocol and Article 4, Paragraph 3, Part "B" of The Second Protocol) .

In Islam, it is emphasized that captive families should not be separated from each other. The jurists of the past have issued a *fatwa* (jurisprudential edict) not to separate captive mothers from their children (Ṭabāṭabāī Ḥā'iri, 1418 AH, 9/85; Aḥmadi Miyānji, 1411 AH). If it is not possible to return the children to their families, the Islamic government and Muslims should search for a safe haven for them. The Islamic government should place them in alternative families or welfare centers until they return to their original families (Al-Azhar University..., 2006).

The Right to Access the Bodies of the Deceased

In Islam, the right to access the bodies of the deceased does not mean that the family owns the corpse. In fact, the ownership of the original owner remains after death. The written will of the deceased regarding a third of their property or their will to allocate a part of the benefits of their property for charity, and then gift the reward of this act of charity to their own soul is proof that ownership does not end with death. Similarly, the term inheritance itself implicitly rather clearly indicates that it is classified as wealth, which does not include the body of the deceased. Therefore, the ownership of the corpse cannot be inherited and is not transferred to the heirs. This is because the inheritance is specifically indicative of wealth which is commonly acknowledged to be wealth (Mustafawi, 1389 SH). Therefore, the right to access the dead body is a right to comfort the survivors,

which must be compatible with the necessity of immediate burial (Hurr 'Āmili, 1409 AH). Therefore, the access of the family to the corpse is in line with the prohibition of imposing unnecessary suffering on relatives. The Prophet of Islam is reported to have criticized Bilal for his negligence in allowing the survivors to pass by their kin who were killed in war and said, "Has your heart become hard such that you let these two women pass by their dead?" (Majlisi, 1363 AH, 21/5).

According to Islam, the dead bodies of the enemy should be handed over to them. Enemies can take their dead bodies out of the battlefield and bury them according to their own customs. In the Battle of Khandaq, after Amr bin Abdwud was killed, the polytheists said they would buy his body for ten thousand dinars. The Noble Prophet said: "The dead body belongs to you, we do not eat the money of a dead man" (Halabi, 1427 AH, 2/428). In the case of Nawqil bin Abdullah, also in the Battle of Khandaq, it is also narrated that the Noble Prophet allowed the enemies to take his body without payment (Wāqidi, 1409 AH, 2/474). Additionally, according to the opinions of some jurists, Muslims must bury the dead bodies of the enemy. This difference between the jurists goes back to a group of absolute and general traditions. From them, some scholars have understood the permissibility of burying the body of an infidel, or its necessity when there is fear of them annoying people or the spread of disease (Najafi, 1404 AH). Some others believe that it is not permissible to bury non-Muslims in the same manner as a Muslim is buried (Ṭūsī, 1407 AH, 1/335). The conduct of the Noble Prophet regarding the burial of those killed in the Battle of Badr, in the well of Qulayb, is also a testimony to the aforementioned view (Bayhaqi, 1405 AH, 3/117; Zuḥayli, 1419 AH). However, other opinions prohibit the burial of an infidel killed in a war with Muslims (Muhaqqiq Ḥilli, 1418 AH, 1/113), or any infidel for that matter (Muhaqqiq Karaki, 1414 AH, 3/384). The right to access the bodies of the deceased implies obligations for the parties involved in conflicts, including:

- The obligation to search non-discriminatory for corpses based on rule 112 of the rules of customary humanitarian law, which may include granting permission to humanitarian organizations, including the International Committee of the Red Cross, to search and collect corpses (Morgan, O. 2009).

Article 3 of the 1929 Geneva Convention states that after any conflict, the victor of the battlefield must take measures to search for the wounded and dead bodies and protect them from being looted and mistreatment. Whenever the situation requires, the parties shall agree to a limited ceasefire or suspension of hostilities to allow for the collection of the remaining wounded between the battle lines (Article 15 of the First Convention of 1949); Article 18 of the Second Convention; Article 16 of the Fourth Convention).

- The obligation to protect the dead against theft, mutilation and looting: according to some rules, such as rule 113 of the rules of customary international humanitarian law (Henckaerts, J.M. & Doswald-Beck, L., 2005). The Rome Statute has also strengthened this obligation by placing mutilation under Part 2, Part "C" Paragraph 2, Article 8 (the desecrating of the dignity of persons as a war crime) (Wels W. 2005). Islam has given precedence to the forbidden nature of these acts in verse 194 of Quran 2 (Surah al-Baqarah) (Najafi, 1404 AH).

- Identification of corpses before burial and the need to mark the place of burial. According to Article 4 of the 1929 Convention, Article 16 of the First Convention of 1949, and Article 19 of the Second Convention of 1949. This rule is further strengthened by the need to respect family living and the rights of families.

- The necessity of observing the family's right of access in choosing the burial place of the bodies. Based on this principle, the grave should be close and accessible to the surviving family members (Tidball-Binz, M., 2013).

The Right of the Family to the Remaining Property of the Deceased

The property that has remained with the body of the deceased, in addition to it being subjected to inheritance from the legal point of view, will also have emotional value for the family. The personal belongings of the deceased are returned soon after the request of the relatives of the deceased. Until 1914, the private property of enemy nationals, unlike their public property, was respected (based on Articles 46-48 of the Hague Convention of 1907), but with the beginning of the World War, the rule of confiscation of private property of nationals of warring countries was implemented. In the years between 1914 and 1918, the countries' decisions were more about determining the nature of the aforementioned right. These

decisions were also legally recognized in the peace treaties of 1919. This right was codified for the first time in the 1929 Geneva Convention. The third paragraph of Article 17 of the First Geneva Convention of 1949 reads:

Cash and, in general, all objects that are valuable by themselves or because of emotional significance and are found on the dead body are collected and sent to the relevant organization through the same office [the Information Office, the subject of Article 122 of the 1949 Geneva Convention]. These objects, as well as objects of unknown ownership, will be sent in sealed packages along with a statement that contains all the necessary explanations to identify the identity of their deceased owner. The complete list of the contents of each package must be attached to it. In addition to this provision, Article 120 of the Third Convention, Article 130 of the Fourth Convention, and Article 34 of the First Protocol have discussed returning their belongings to their families.

This right can also be applied in the procedure of governments as a customary rule of international law (Rule 114 of the Rules of International Humanitarian Law). Perhaps, at first glance, the presumption of a right known as the right of war booty indicates the expropriation of the victim's family concerning the property remaining in the clothes or with the body of the deceased. The right-of-war booty also includes items such as the uniforms of enemy soldiers and their belongings, such as armor, boots and weapons, such as swords and the like, riding animals, saddles, bridles, bracelets, belts, rings, etc. It includes bottles, bags and any other type of container that has water in it.

To expropriate, the following conditions are required:

- The infallible Imam has stipulated it;
- The victim must be a member of the enemy's troops and warriors;
- The enemy must be resistant and have military power, not prisoners and wounded;
- His killer should be known. (Tūsi, 1407 AH, 2/66)

Therefore, several restrictions have been considered to protect the rights of the family. According to these restrictions, it is possible to confiscate only during the war from the property of the enemy killed, by his killer and with the permission of the Muslim ruler.

The Right to Prohibit Psychological Abuse and the Right to Compensation for Emotional Trauma

In line with the prohibition of causing excessive pain and suffering (Article 35 of the First Additional Protocol), including the emotional pain and suffering of the family, several regulations have been provided. Regulations such as respecting the dead, burying them according to their religious principles if possible, respecting their graves and maintaining them correctly (Articles 16 and 17 of the First Geneva Convention; Articles 19 and 20 of the Second Convention and Article 17 of the First Protocol). However, emotional harm to the family due to war is largely unavoidable. Regarding the right to claim emotional compensation in the context of the following analysis, it should be said that emotional damage is a complex concept because both components of this concept are self-evident and cannot be analyzed by logical criteria. Muslim jurists and scholars consider cases such as damaging the dignity and reputation of a person (Najm Jirān, 1981), damaging the honor and dignity of a relative, exerting physical pain and mental suffering (Katouzian, 1386 AH, 1/144) and damaging social reputation (Al-‘Awji, 1995, 2/168) and injuring family feelings and emotions as examples of this harm (Āshūri, 1376 AH, 1/208.)

In Islamic jurisprudence, several examples show the paying of compensation for emotional trauma as a method of compensation in humanitarian law, including:

- Payment of blood money to the tribe who were attacked by Khaled bin Waleed (Zamakhshari, 1364 AH, 3/182).
- Financially compensating the fear of the women and children of the Bani Khuzaymah tribe caused by the galloping horses (Majlisi, 1403 AH, 1/140). However, if we were to take into account this conduct of the Noble Prophet, the instances of application of the traditions that mention no damage and the occasion when an Ansar man and his family were compensated for emotional trauma, the prophetic tradition that is mentioned below, and if we were to accept that blood money is a form of compensation, we can then opine for the right to compensation for emotional damage. Ḥasan ibn Maḥbūb narrated from Ḥamād ibn Isa from Sawar from Ḥasan Baṣri, who is reported to have said:

When Imam Ali defeated Talha and Zubair, their army fled and met a pregnant woman in the middle of the road. That woman became terrified when she saw the fleeing soldiers. This caused her to, there and then, deliver her baby, which died. Thereafter, the mother also died. ‘Ali bin Abi Talib and his companions then passed by that woman who was lying on the ground with her dead child. Imam Ali asked the people about that woman, they said:

She was pregnant and when she saw the fleeing soldiers, she got scared. Imam ‘Ali then asked which one died first. They replied that her baby had died first. The Imam called the woman's husband and gave him two-thirds of his son's blood money in the form of inheritance, and left one-third of the blood money for the child's deceased mother. Then he gave half of the blood money that had been given to the mother of the dead child to the husband as the inheritance of his deceased wife, the rest was given to her family. Thereafter, half the blood money of the deceased woman was given to her husband as his share of inheritance. This was because, at the time of her child's death, she had no other children. Then the Imam gave the rest of the deceased woman's blood money to her relatives. The Imam paid all the blood money from the public treasury of Basra (Kulayni, 1407 AH, 7/138).

Therefore, the damage caused by fear or any emotional damage, such as damaging the family identity and honor must also be compensated. The author of the book *Anawin* writes:

Honor is something that is part of a person's respect, and its violation causes him to be humiliated among people. Therefore, if a person's wife or family members are disrespected, it is an instance of defamation and in fact, harm to others. The claim that the damage is only to property and body and does not include these items is not correct (Husayni Murāghi, 1417 AH, 2/309).

The Right to Receive Economic Support

This right has been approved in several cases by the International Conference of Governmental and non-governmental experts in 2003 and the 28th International Conference of the Red Cross and Red Crescent. This is because the families of missing individuals spend a lot of money to try and find their missing relatives, in addition to their living expenses. One of the examples of the humane view of Islam is that the Noble Prophet said:

"Whoever is killed in war and leaves behind a family, it is our duty to provide for that family" (Tūsi, 1407 AH, 6/211). Imam Ṣādiq is also reported to have said in a tradition: "The Noble Prophet sent an army to the Khath'am tribe. When the army of Islam surrounded them, they prostrated to avoid being killed, but some of them were killed by the Muslims while in this state. When the Noble Prophet heard this news, he said: "Pay half the amount of blood money to the heirs of those killed." (Kulayni, 1407 AH, 5/43).

Conclusion

The family can be considered covered by the rights identified for each non-combatant civilian, namely, children, women, the elderly, and the disabled. Some rights are specific to certain family members can be considered as being family rights, such as the right to pregnancy health, the right to pre-and post-natal care, or the right to remain neutral and be protected for women, which can be pursued under the principle of the classification of non-combatant civilians in Islamic jurisprudence. The present article examined the rights of the family during armed conflicts as they belonged to the family. In this view, the foundation of the theory of humanitarian law regarding the family is related to the identification of the family as a victim of war. In fact, this right can be considered to be associated with or another expression of the legal possibility of including the family within the humanitarian law system. Based on this analysis, although some humanitarian laws have far-reaching and extensive effects, some humanitarian rights have no subject other than the family (transpersonal rights) and it is necessary to discuss about the theory of humanitarian law that focuses solely on the family.

In terms of data collection and linguistic clarification, international humanitarian law has less addressed the independent issue of the family during and after conflicts. But with an analytical view, some of its rulings can have requirements in two categories: laws prohibiting and limiting conflicts and compensatory laws. In Islam, every law has its foundation in verbal and practical traditions and some verses of the Glorious Quran, which have also been expressed and shown within jurisprudential verdicts. In international humanitarian law documents, the issue of the family has been addressed to some

extent in several documents, including the Geneva Conventions, the Human Genome Declaration, and the Refugee Convention, but Islamic aspects can help to complete the theory of humanitarian law regarding the family to a great extent. Also, the theory presented in this article believes that the family has several rights. Therefore, the family owns its hereditary information and the property left over from the dead bodies of the family members. In the first case, this right provides the basis for realizing other rights during armed conflicts; including the prohibition of discrimination in having medical facilities or the prohibition of the biological removal of future generations. In the former case, under the title of the right of expropriation, Islam has set limits for the expropriation of the property of combatants, i.e., if there is expediency and the permission of the rightful Muslim ruler. One of the other rights of the family is that their access to the bodies or graves of their deceased should be facilitated. The right to access the bodies of the deceased also implies obligations to those involved in the conflict. Among them are the obligation to search for bodies indiscriminately, the obligation to protect the dead against theft, amputation, and looting, the obligation to identify the identity of the deceased before burial, and the necessity of marking their burial place and observing the family's right of access in choosing the burial place.

Necessary support should be provided in the asylum process. Knowing the truth and what happened to their family and protecting a family's honor are also among other family rights during international armed conflicts. Compensation rights, as a right after armed conflicts, are a basis of forgetting and healing for the victims of war, which appears in the form of economic support and compensation for emotional damage. It should be noted that from the number of documents and sources presented during the research, two main features of non-exception and non-limitation of humanitarian rights governing the family can be found. This means that these rights are assigned to all families and the receiving of this support is not subject to any restrictions. Finally, it should be noted that despite the differences of opinion among international law scholars, it seems that the rules proposed in this theory can be considered applicable to domestic (non-international) armed conflicts as well, which state the government's obligations towards the family in two forms, i.e., affirmative and negative.

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