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Protection of Children During Wartime under Islamic Law and International Law Perspective

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Abstract: This study aims to discuss the issue of whether protecting children from being killed is an absolute order under Islamic law. It also discusses the extent of which children are allowed to participate in armed conflict. Finally, this study will analyze the provisions contained in international conventions regarding this issue. This study argues that the prohibition on killing children during war has various exceptional circumstances that allow them to be killed. However, neither example of the exceptional circumstances could be found in the exemplary life of the Prophet nor the sacred texts but solely depend on Muslim scholars interpretation. Then, the Muslim scholars views on permission to allow children as young as 15 years old to either be recruited or forced to be soldiers due to their maturity (baligh) is consistent with the provisions stated in Articles 38 (2) and (3) of the United Nations Convention on the Rights of the Child (CRC).

Key words: Islam and war, war and Islamic ethics, children and war, maturity, conflict, Malaysia

INTRODUCTION

Children under Islamic law have many recognized rights which they should not be deprived of as the law in Islam comprehensively discusses the rulings related to them. This divine law provides for the protection of children that unequivocally stems from various texts most importantly the al-Quran and Prophet's traditions. Among the notable rights that will be closely examined in this research is the right to live which is protected by one of the higher objectives of Islamic law. This right has been thoroughly discussed by Muslim scholars according to various contexts and backgrounds in order to ensure the utmost protection of these rights as prescribed by the texts (Rehman, 2011).

In the early stages of Islamic law's development, children were already exposed to one of the harsher realities of the world provocatively identified as a main feature of human civilization that sometimes inexplicable occurrence we identify as war. Children experienced and witnessed first-hand the bloodshed the woes of the wounded and the heat of battle. Contrary to the seemingly unacceptable idea of children being exposed to such horrors, it is documented that children were positively encouraged to be future martyrs by defending their religion and the sovereignty of the Muslim state, it was not promotion of senseless violence but rather an opportunity to serve Islam in a manner prescribed by God (Ugor, 2012; Ozdemir, 2010). This fact however does little to appease the outraged voices that cry for children Muslim or otherwise who have been killed, orphaned, traumatized and maimed by war. Unfortunately, this disquieting aspect of war has not changed even as humankind enters the age of technology and by virtue of it technological warfare.

In the modern context, the challenge to maintain peace in troubled and hostile regions remains a constant uphill battle. As the world community focuses more on the advocacy of peace, the fate and lives of children trapped in these hostile settings is a plight that is being viewed with ever-increasing urgency. Needless to say many predominantly Muslim countries have been at war for several decades the impact of which has been continuously devastating the lives of children in the concerned regions a situation that has progressively worsened since the colonial era. It is therefore imperative that the plight of Muslim children and their counterpart among the non-Muslims is scrutinized under Islamic law particularly concerning two issues:

- To what extent children, regardless of their religion are protected from being killed during wartime
- To what extent Muslim children can be recruited into armed forces

It may be significant to note that all the Muslim scholars argumentations regarding the above questions will be examined with the understanding that the interpretation of the texts were subjugated by the relevant religious authorities and are closely related to the classical

contexts. These two conditions which are prevalent in colouring the canvas of Islamic law is key in giving later generations the opportunity to review all legal rulings issued by scholars from a modern context or perspective without deviating from the methodologies in the discipline of Islamic law. As it is the issue of protection of children in warfare must be put to the fore as it affects both Muslim and non-Muslim communities today. A progressive Muslim who promotes his religion as peaceful and denounces terrorism will insist that Islam orders its followers not to kill children even during wartime. The militant terrorist or jihadist each terminology being markedly different and not to be used interchangeably base their struggle and cause on the interpretation of the scholars regarding this issue and in turn comprehensively indoctrinate their recruits with their understanding. The latter however is often misunderstood as being the stand of all Muslims in general. Non-Muslims tend to perceive Islam with numerous misconceptions since sadly the promotion of positive interaction between Muslims and non-Muslims to understand each other is rarely the main objective in todays so called civilized world. One such misconception is the argument that Islam indiscriminately allows for children to be jeopardized by war whether as a soldiers or as victims. This issue can be better understood if the following basic question is answered first whether or not Islamic law truly protects the lives of children during wartime (Rousseau and Jamil, 2010). For preliminary study, this study will also discuss the provisions of the United Nations Convention on the Rights of the Child (CRC) regarding these two issues. As all Muslim countries around the globe except Somalia have ratified this convention the compliance of all the provisions contained in the convention will affect those countries in implementing the classical Islamic legal rulings regarding this issue. This study will therefore also briefly examine whether the Islamic perspective contravenes the said convention or not.

PROHIBITION OF KILLING CHIDREN DURING WARTIME

As a divine and comprehensive law the Syariah explains the laws and ethics that govern and include all Muslims during wartime. Even though, the classical juristic views reflected are from a different setting and backdrop of war compared to modern-day warfare the framework can still be implemented or adapted. The simple fact is that Islam is all about the promotion of a peaceful world and it denounces any form of terrorist activities. Issues regarding war and the ethics of waging war must therefore be comprehensively discussed. One of the leading points that reflect Islam as a peaceful religion and a strong advocate of peace is the provision that prohibits the killing of children by any means. This provision somehow always manages to spark interest and conflict in the international community's perceptions about Islam as will be further elaborated later on. A casual search of the words Islam and peace will reveal that the idea is mentioned without reference to arguments by the classical scholars. The question is whether Islam really adheres to this kind of protection during wartime to what extent children are protected from being killed and are there any exceptional circumstances that change this provision. Muslim jurists have categorized the discussion of these issues into two points:

- The ruling on not to kill children
- The ruling on killing children if they participate in armed conflict

The ruling on not to kill children: Children of the non-Muslims enemy who have not attained the age of puberty should not be killed as Muslim scholars unanimously agree on that. All Muslim scholars unanimously agreed that no child can be killed during wartime. All the jurists unanimously agreed that children cannot be killed. To support this argument several explicit authorities are quoted use by the scholar as follows:

> Verse 190 Chapter al-Baqarah:
>
> Fight in the cause of Allah those who fight you but do not transgress limits for Allah loveth not transgressors
>
> Hadith narrated by Abdullah ibn Umar:
>
> During some of the wars participated by Allah's Apostle a woman was found killed so Allah's Apostle forbade the killing of women and children

Hadith which was an advice by Ibn Abbas for the governor of Najdah:

> Allah's Apostle never killed children so do not kill children

Hadith narrated by the father of Buraidah that the Prophet said:

> Go to war with the name of Allah in the way of Allah and kill those who disbelieve in Allah. Wage war and not beyond the limit and do not mutilate human bodies and do not kill children

The literal interpretation from these authorities is that children are to be given the utmost protection in Islamic law during wartime. The justification to not kill them is due to their physical weaknesses. Furthermore according to the Hanafi scholars, the killing of children is forbidden as they are not included under the concept of ahl al-hirabah (qualified person to be a soldier). Children are not qualified to join the military and take up arms, so killing them is not the accepted practice. This view was chosen by Ibn Taimiyah. The provision not to kill children as it is generally understood appears to mean absolute protection. On the other hand, in understanding these authorities Msuslim scholars have interpreted it in various contexts. Firstly, if children do not get involved in the battle and do not take any kind of participation in helping the army to fight against Muslims, they will be given absolute protection. Ibn Ruysd opined that if they participated their blood is allowed to be shed. Secondly, this provision will not be applied as al-Zahim pointed out if they were killed during silent attacks at night or using arrows or ammunition. This view comes from the authority of al-Shaʿbi bin Jathamah who said that he had killed women and children during the night raid (being unable to distinguish civilian from combatant in the darkness) and the messenger responded by saying the deceased are of them, i.e., the disbelieving community. In commenting on this hadith al-Nawawi said that this is a correct view as formulated by the Shafiʿe scholars Malik, Abu Hanifah and the majority of the scholars as during the night attacks the soldiers could not easily determine whether the enemy is a man woman or boy (Takim, 2011a, b). Clearly, from this discussion is the fact that children do get protection during wartime but Muslim scholars narrowed the protection to the children who do not get involved in armed conflict. Shockingly children's lives are also not protected if the army cannot determine the gender and the age of the enemy especially if the attacks were carried out during the dark of night.

Ruling on killing children if they participate in armed conflict: Granting and protecting the right to live is a salient feature of Islamic teachings. As the main objective of the syariah is to protect life Muslim scholars have carefully discussed this issue in order to not deprive anyone of their rights. Due to the complexity of the war issues Muslim scholars assiduously contextual interpretation of the authorities rather than embracing the literal approach. As the Muslim world has a long history of war the authorities that ask not to kill children has been evaluated rigorously by the various schools of thought. The question as to whether child-soldiers in the enemy armed forces are still protected under Islamic law and whether children who join the military and get involved in the battle can be killed is answered by Muslim scholars who are of two views the first allowing them to be killed and the second putting the defence justification to legalize it.

Firstly, the majority of the Muslim jurists who are of the view that children can be killed if they get involved in armed conflict include Malik, al-Shafie, Abu Hanifah, al-Thauri, al-Laith, al-Auzaiʿe, Ahmad Ishak, Abu Thaur and Abu Muhammad bin Hazam. Even al-Nawawi argued that this view is the consensus of all Muslim jurists. The prohibition of killing children in the hadith texts only apply as long as they are not going to war to kill Muslims or serve the enemy forces.

It is important to note why the jurists reached this conclusion and discuss the justifications or reasons laid down by them. Al-Shafie, the leading scholar who is regularly cited by other jurists in this issue had issued a legal ruling that children the elderly and women can be killed during wartime if their involvement in the battle is proven. Al-Shafie's view was commented on by Ibn Rusyd al-Andalusi after he cited several scholars views which prohibited children and women to be killed. Ibn Rusyd based his view in tandem with other scholars with the following al-Quran verse:

> Fight in the cause of Allah those who fight you

In many scholarly works verse 190 Chapter al-Baqarah has been used as authority to allow that particular practice. When children take part in armed conflict in order to kill Muslims according to the comprehension of that verse they must be fought back or be killed. Ibn Taimiyah further argued that the correct view is killing the children if they are in the enemies' military and have intention to kill Muslims. Ibn Taimiyah refuted the idea of not killing children during war because the women and children of a defeated non-Muslim army become spoils of war that can be legally possessed by Muslims. According to his view, children must be killed because they will be involved in armed conflict to wage war against Muslims as verse 190 Chapter al-Baqarah of the Quran makes clear. There are other authorities that scholars have used to support their argumentation for instance the following hadith by Rabah bin al-Rabiʿ al-Tamimi. We were with Allah's Apostle in one battle. The Prophet SAW the people crowded around something and he sent a man to them and said:

> Look to the reason they gathered. The man said a woman was killed. Then the Prophet said this woman should not go to the battle

Based on the hadith, a non-Muslim woman who participates in battle against the Muslims risks being killed or injured by the forces of Islam her right to receive protection is repealed by her violent intent. Another hadith on the authority of Ikrimah elaborated more on this:

> The Prophet passed by a woman who had been killed after the battle of Hunain and asked who killed her? A man said It was me O Allah's Apostle; this woman was captured by me and I made her ride behind me. After she saw that we were nearly defeated in the battle she was going to take my sword and try to kill me but i killed her first. Hence, the Prophet did not oppose that

From these two hadiths, even though they specifically mention women, it gives a clear picture to the Muslim scholars that Muslims can kill those who originally receive protection by the Prophet to not be killed. This view was also subsequently applied to children who try to kill Muslims or take part in armed conflict. The minority view is slightly different in dealing with such issues. Muslim scholars explained that if children tried to kill Muslims with swords or javelins they can be killed in self-defense. If however, they just threw stones from over the fortress they should not be killed. In explaining this view, al-Zarkani cited the legal ruling issued by Malik and the scholars in his school of thought. Malik was asked about women and children of the enemy who stayed inside the fort firing stones at the Muslim army and helping the enemy to kill Muslims and whether they can be killed or not. Malik answered Allah's Apostle forbade us to kill women and children. His view however, was expanded by another Maliki scholar, Ibn Habib who said that women and children can be killed in self-defense. Furthermore, Maliki scholars mention that children who are prisoners of war can also be killed an action which is similarly carried out on male adults. The participation of children in battle was the main point to legalize their killing and the scholars argued that particular actions can nullify their protection from being killed. Put simply they added the status of children who get involved in armed conflict is similar to those who were prisoners of war. In addition, they contended that children are protected and are not to be killed except in actions of self-defense. The prohibition of killing children is the general rule and killing for reasons of self-defense is the exceptional provision. The authority that is referred to for this view is the hadith of Ibn Umar, as previously mentioned.

It is critical to note that if children of the enemy should be killed how about the action of the Prophet who decided not to punish the children of Tabuk after receiving the worst treatment by them instead of accepting the angel's offer to kill them off? Furthermore, why do Sunnis believe that all children Muslim or otherwise are not held accountable for their actions are born clean of sin and will be in heaven if they die before puberty together with the Muslims? If they were killed during war are they in heaven too? To further argue the matter if it is permissible for non-Muslim children to be killed in the context of war is there any prospect left for them to convert to Islam in the future? Do children pose such a tremendous threat to Muslim armed forces when their fighting skills are obviously far less than those of adults? If children follow the adults to wage war against Muslims they must be under the influence of their adult or religious authorities and have no free will to choose differently and have insufficient maturity to understand the conflict. Killing them will only emblaze hatred among the young disbelievers and they will totally refuse any future actions to seek understanding between these two communities and close their doors to the message of Islam. Classical works that refer to the authorities that only mention women to justify the action of killing children should not be accepted as adult women have a completely different capacity both mentally and physically compared to children. If the Prophet did not mention or do it why should Muslims interpret it differently from the Prophet's guidance since his guidance is the best?

The conclusion from this discussion is that children do not get absolute protection under Islamic law contrary to the widespread belief or perception among the Muslims. In actuality, they can be killed if there is no other such way to destroy the strength of the enemy except with the means of killing them or they are recruited into the armed force of the enemy and participate in killing Muslims. The killing can only take place if children expose themselves to war as a soldier. If they are remotely far from the battle, Islam clearly prohibits killing them. Although, Muslim scholars explained the justifications behind their rulings this view must be evaluated and linked to the context when such rulings were issued as there have been many times throughout history when Muslim communities have been subject to oppression threats and attacks from the disbelievers (Mavani, 2011; Ilesanmi, 2011).

PARTICIPATION OF CHILDREN IN ARMED FORCE

Generally, in order to join the armed force Islam has listed several conditions and requirements before someone is allowed to serve. The person must be a Muslim is taklif (has attained puberty and is of sound mind) a male, a free person and is physically fit. Muslim

scholars have discussed these conditions thoroughly with supporting authorities. Due to limited space to address the current issues this discussion will only deliberate on one of the conditions that relate directly to children, i.e., the issue of the person who wants to join the armed force must be a taklif or has reached puberty which is classically perceived as a sign of maturity (Bakircioglu, 2010). Islam only allows those persons who have attained puberty and are sound of mind before being permitted to get involved in the military.

These two requirements are known as taklif a religious obligation. Since the jihad is a kind of worship as applied in prayer and fasting a Muslim who has a taklif is obliged to observe it devotedly. From this point, children who have not attained the age of puberty do not have the said obligation in terms of taklif to answer the call of jihad when it is declared by the Muslim government. Being a Muslim who has attained puberty and has a sound mind are the conditions for all of the religious obligations. Children are not obliged to go to war due to their lack of physical strength. Furthermore, Muslim scholars argue that children in particular fall in the group of al-dhua^{c}afa as mentioned in the following Quran:

> There is no blame on those who are infirm or ill or who find no resources to spend (on the cause) if they are sincere (in duty) to Allah and His messenger no ground (of complaint) can there be against such as do right and Allah is oft-forgiving, most merciful

The exclusion of dhua^{c}afa in the above verse which was alternatively defined in the jihad context was meant to exclude children from the military force by virtue of their physical weakness and incapacity. On top of that most of the Muslim scholars' argumentation are based on the frequently used authority which suggests that children are not obligated with any religious duties. As recorded by the majority of canonical hadith books Prophet Muhammad (SAW) said:

> The pen has been lifted from writing the deeds of three the one who is asleep until ones wakes up the child until he becomes pubescent and the insane until he becomes sane

This authority is supported by the hadith narrated by Ibn Umar which is profoundly referred by scholars in many of their works when dealing with the participation of children in battle as follows that the Prophet inspected him on the day of Uhud when he was 14 years old and the Prophet did not allow him to take part in the battle. He was inspected again by the Prophet on the day of al-Khandaq (i.e., battle of the trench) when he was 15 years old and the Prophet allowed him to take part in the battle. From the above hadith text Muslim scholars deduced the age of puberty to be 15 years old for boys. The Prophet disapproved of the applications of 17 young companions who were 14 years old and was perceived by the Prophet as not having reached puberty or the age of majority yet. A year after as the Prophet had verified their maturity, they were then allowed to fight together with the adults. In addition, al-Nawawi mention that this authority which was cited by several scholars such as al-Shafie, Ahmad, Ibn Wahab and al-Auza^{c}ie is evidence of the determination of puberty at the age 15. After a person has achieved that particular age he must observe all religious obligations is entitled to the after-war booty and can be punished with the death penalty if he wages war against the Muslim government.

In short, this condition clearly mentions that children <15 years old cannot be permitted to serve in the Muslim military. From all of these authorities and consensus of Muslim scholars children are carefully protected during wartime and are excluded from the battlefield.

The critical question that remains however is whether this provision of protecting children from being victimized or jeopardized by war is an absolute one or if they could be forced or allowed to serve in the military. Even though this issue was not mentioned conspicuously in the classical discussion Muslim jurists made an exclusion for this ruling by authorizing the adolescent who has nearly attained puberty if he is capable of handling and shooting arrows or has the physical strength of an adult in establishing this idea refered to a hadith that noted the permission made by Prophet Muhammad (SAW) to Samurah bin Jundub and Rafi^{c} bin Khadij. Several records mentioned that both of them were 15 years old but the other put it as al-Murahiq a pubescent. As pointed out by Ibn Hisham, a prominent prophetic historian in his book:

> Initially, the Prophet had rejected the application of Samurah bin Jundub and Rafi^{c} bin Khadij. Someone said to the Prophet O Allah's Apostle. He (Rafi^{c}) is among the best shooters. Then, the Prophet allowed him. That decision was seen by Samurah and he requested the same. Samurah offered to prove his physical strength by fighting with Rafi^{c} and successfully defeated him. Then, the Prophet allowed him as well

The question that arises here is whether the approval made by the Prophet was due to the age of both companions or based on their capability in using weapons as well as physical strength. As commented by al-Jassas the Prophet's approval of them joining the military is not related to the age of puberty. In explaining the reason,

rejection can apply to the adult who is weak. In contrast, the approval for the children might be based on their strength and skill in using weaponry. Al-Jassas argued that at that particular time the Prophet did not ask whether they had reached puberty yet as such determined by wet dreams. Hence, it is clear that some Muslim scholars believe that children can participate in armed conflict if it will benefit Muslim military force.

The interpretation of these scholars who allow children to be soldiers must be refuted and rejected due to the clear authorities mentioned before. In addition, there is an authority mentioning that the Prophet asked Ali to live in Medina to protect the women and children who were left behind.

As narrated by Saad ibn Ibrahim the Prophet set out for Tabuk and appointed Ali as his deputy in Medina. Ali said Do you want to leave me with the children and women? The Prophet said:

> Will you not be pleased that you will be to me like Aaron to Moses? But there will be no Prophet after me

From this hadith, even tought not explained by Ibn Hajar, it obviously illustrated the exact practice during early Muslim government. Children together with their mothers were left behind and did not participate in the war. Only adults were obliged to the jihad with certain exceptional reasons such as in Ali's case and for the student or scholar. Besides, it can be argued that the Prophet did not force children to answer the call of jihad if we investigate explicitly the hadith of Ibn Umar and Samurah. In all cases, they asked the Prophet to allow them in military service with minor and specific roles without any pressure. It means that the participation of young companions was a voluntarily action and of their own free will.

In contrast, there were no authorities supporting the idea that the Prophet had forced the children to be soldiers. In addition, as can be established form the context at that time Muslims were under threat by the Meccans' polytheists who continuously assaulted and attacked them. As a defense mechanism, all Muslims must protect the newly-developed Islamic nation with the participation of all members of the society. Even children at that time were encouraged to be equipped with archery and horse riding skills which can be simply understood as preparation for being well-skilled future Muslim soldiers. This situation must be considered when dealing with this particular issue.

What is clear is that there was no such action from any young companion after the said battle (Ali, 2009; Burki, 2011; Davis, 2011; Tibi, 2011).

UNCRC: A NEW SETTING FOR THE MUSLIM WORLD

Muslim states compose a quarter of the world today. The Convention of Rights of Children (CRC) which has been ratfied by all but one Muslim state gives a new setting for them to live harmoniously in the modern and contemporary context. Without neglecting the requirements of Islamic law all the Muslim states carefully deal with all the provisions in that convention whether accepting them totally or with some reservation. Therefore, there are two issues to look into whether children can be killed during wartime and be recruited into armed force under the CRC (Mosaffa, 2011). Based on international standards as set up by Article 1 of CRC, a child can be defined as a person >18 years old. After that particular age a person will be considered as an adult and to have attained the age of maturity. This is contrary to Islamic law which determines the age of majority as being 15 years old if there are no other recognized signs of puberty occurring. Therefore, those persons aged 16-18 years old who are considered by CRC as children are no longer considered children under Islamic law. This means that under Islamic law, those persons aged 16-18 years old will be categorized as adults and do not get any protection from being killed during wartime even though they are not involved in the armed forces. Yet, this condition is no different from the international standard which does not absolutely protect children aged 16-18 years old. Basically, Article 38 (1) CRC mentions that all states parties must respect the international humanitarian law applicable to them in armed conflicts which are relevant to the child. For example, Convention (IV) relative to the protection of civilian persons in time of war (Geneva, 12 August 1949) as the law that governs this particular issue provides several provisions which can be summed up as protection is reserved only for children <15 years old who have rights to medicine, hospitalisation and treatment. In other words, if Islamic law only protects children <15 so does international law.

Secondly on the issue of child military-recruitment, the question is whether Muslim states now-a-days face difficulty in harmonizing CRC requirements with Islamic law rulings. Is it possible for Muslim states in the contemporary setting to determine a standard age for their army to receive training in military camps and expose them to the real backdrop of war? In answer to this question, Article 38 of the CRC must be referred accordingly:

- States parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities

- States parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years states parties shall endeavour to give priority to those who are oldest

As clearly mentioned from the above provision the CRC lays down a time frame for military recruitment which is similar to that of Islamic law. CRC and Islamic law share the same value that all children <15 years old should not take a direct part in hostilities or war and are not to be recruited into armed forces. However, from a different angle the CRC perceives those persons from 15-18 years old as children while Islamic law no longer recognizes them as children. In addition, constructively legislated, the CRC allowed the states parties to recruit persons who have attained the age of 15 years but have not yet attained the age of 18 years old. This means that it is permissible for any states parties in this convention (whether Muslim or not) to force and recruit those persons from age 15-18 years old into their armed forces. It is clear that the Islamic law's provision in allowing persons as young as 15 years old, neither contravenes with the CRC in this context nor contradicts with the international military practice. But the aspiration of the last provision as quoted states parties shall endeavour to give priority to those who are oldest must be embraced by the states parties especially the Muslim states. Due to the lack of their physical and psychological capacity children should not be treated as adults.

It can be concluded that Islam prohibits any exploitation of children into the armed forces and their right to live should not be jeopardized by their recruitment in the military service. However, Islamic law dictates that those persons who have attained 15 years of age are no longer considered a child contrary to the CRC and can be recruited into the armed forces. CRC also gives the permission to the states parties to implement the same policy as Islamic law but still perceives them as children.

CONCLUSION

While promoting Islam as a peaceful religion most of the contemporary Muslim scholars contend that Islam denounces all kinds of terrorism. They give the ideal example to support this idea and significantly influence the world community's perceptions which is that Islam forbids killing children during war. In addition, children's lives should not be jeopardized by any repercussion of the war. Unfortunately, whether intentionally or not they fail to reveal the discussion of the classical scholars on which their legal rulings can easily be misunderstood and be used as justification of terrorism among ignorant Muslim and non-Muslim groups. The authorities which mention that children should not be killed are clear cut provisions.

The classical Islamic scholars' discussion on this issue must be reviewed and evaluated to develop better understanding between the Muslim community and others in the modern context. It must be understood that the interpretation of authorities done by the Islamic scholars in classical settings was heavily influenced by the background of the time, it was issued. Contextually, Muslims had faced a lot of oppression and aggression from the disbelievers and the legal rulings regarding war must fit to cater to the situation. Even though, we are tied to follow the authorities and its objectives we are not obligated to strictly follow the classical scholars' interpretations.

The authorities are supposed to guide Muslims to treat children with good care and conduct. As the higher objectives of Islamic law recognize children have an absolute right to live from the day they are conceived in the womb this protection of their rights should be maintained when they are born unto this world. From the discussion of this research, it can be concluded that the protection mentioned in the hadith texts were enjoyed only during the Prophet's time. After that classical Islamic scholars expanded their interpretations to allow children to be killed during wartime with several justifications. On the second issue, Islam determined the difference between children and adults with the concept of puberty and prescribed detailed signs of it. The age of 15 is the age of maturity determined by Muslim scholars if there are no other signs occurring. Therefore, in Islamic law children who are <15 years old cannot serve the military even though certain scholars approved it due to weapon skills that they possessed. After that age they are no longer considered as children and are obliged to perform all religious obligations such as prayer fasting and jihad.

Furthermore, this study discusses these two issues according to the new requirement faced by Muslim states. According to international standards such as the CRC and the Geneva Convention, it can be summed up that the protection of children from being killed is only for those who are <15 years old in addition to other rights such as medicine, hospitalisation and treatment.

Therefore, the protection given by Islamic law to children <15 is not contradictory to international law. With regard to military recruitment both Islamic law and international standards share the same value and provide protection to children <15 years old from being recruited into armed forces.

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