

**THE LEGAL STATUS OF FEMALE COMBATANTS
IN ARMED CONFLICTS: A COMPARATIVE
STUDY OF ISLAMIC LAW AND INTERNATIONAL
LAW**



LLM RESEARCH THESIS

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LIST OF ABBREVIATIONS

API	Additional Protocol I to the Geneva Conventions, 1977
APII	Additional Protocol II to the Geneva Conventions, 1977
GCs	Geneva Conventions
GCI	Geneva Conventions (I), 1949
GCII	Geneva Conventions (II), 1949
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IAC	International Armed Conflict
ICRC	International Committee of the Red Cross
NIAC	Non-International Armed Conflict.
UNSC	United Nations Security Council
WPS	Women, Peace and Security Agenda

Acknowledgment

ABSTRACT

The last and present century face a significant increase of female combatants at the state level, i.e., legal and terrorist group levels. So, it took the attention of legal studies at various levels. Female combatants are part of reality in war scenarios worldwide, but they still have no special legal protection. Furthermore, the legal dimensions of female combatants still need to be defined fully. However, a plethora of research deals with legal aspects and dimensions of male armed combatants in International Law. How should they be treated in prison, in case of being caught up by enemies, and what is their special status? Nevertheless, international law needs more sophisticated details about female combatants and their roles. While Islamic Law, on the other hand, is mature and has a detailed discussion in this regard.

This comparative study delves into the intricate legal status of female combatants in armed conflicts, examining intersections and disparities between Islamic law and international law. As women's participation in military roles across the globe continues to evolve, this research aims to provide a comprehensive analysis of legal frameworks governing their status in conflict zones. This study begins by the foundational principles of Islamic law and IHL, each of which plays a pivotal role in shaping the legal status of female combatants. It explores historical contexts, religious interpretations, and cultural nuances that underpin Islamic law's approach to women in warfare, with the progressive standards outlined in various international legal instruments.

Through a comparative lens, this dissertation scrutinizes the recognition of female combatants, their rights, and protections in both legal paradigms. The Geneva Conventions

(herein after use as GC) and Additional Protocols (herein after use as AP) serve as a cornerstone in international law, while Quranic interpretations and Hadiths ground Islamic law's perspectives. This study also focuses on case studies from different conflict zones, illuminating how these legal frameworks are applied in practice. Key challenges and controversies related to the legal status of female combatants emerge, reflecting issues such as discrimination, gender-based violence, and varying interpretations within Islamic jurisprudence. This research underscores the critical importance of reconciling cultural and religious traditions with evolving international standards to ensure the equitable treatment and protection of female combatants.

Ultimately, this comparative study seeks to contribute to ongoing dialogues on gender equality, human rights, and rule of law within context of armed conflicts. It advocates for a holistic understanding of the legal status of female combatants that bridges the gap between Islamic and international legal norms, fostering a more inclusive and protective environment for women in the theater of war. This study recommends that female combatants must be defined under any law or regulation governing their participation in armed conflicts. The importance of defining female combatants is evident. The need for a definition consistent with international law, national law and the interests of female combatants should be considered when determining whether or not they may participate in armed conflict.

The Legal Status of Female Combatants in Armed Conflicts: A Comparative Study of Islamic Law and International Law

THESIS STATEMENT

The legal status of female combatants during armed conflicts in international and Islamic law remained doubtful and vague. The doubtfulness nature of this issue should be addressed through critical analysis and comparison of the status of both the legal frameworks.

INTRODUCTION

International Humanitarian Law (herein after use as IHL), also known as laws of war or laws of armed conflict, is law that governs conducts of war, its reasons, and effects. It is in form of rules stipulated in treaties, conventions, and customary laws, which govern relations between states relating to war times. This legal framework is applicable to both IACs and NIACs.¹ Combatants are a crucial part of IHL. These are people who legally take part in any hostility during an armed conflict. In IHL, there are various laws dealing with status of combatants and treatment with them during and after the armed conflicts.²

Female combatants play a significantly larger role in modern warfare than in the past. To provide just a few examples, around 15.6% of the US army, 15.5% of the France 17.9% of the Australian armies are consist of women warriors. Female combat pilots can now join

1. ICRC. "What Is IHL?" *ICRC*. October 13, 2014. <https://www.icrc.org/en/document/what-international-humanitarian-law>. Accessed on 8 March 2022.

2. ICRC. "Combatants and POWs | How Does Law Protect in War" *ICRC– Case Book*. <https://casebook.icrc.org/law/combatants-and-pows>. Accessed on March 8, 2022

China, India, and Japan air forces. Furthermore, as of 2016, all combat roles in militaries of UK, Australia, and USA are open for women.³ Female fighters are entitled to same general protection as any other member of a conflicting party under IHL. Importantly, these broad rights must be administered without any sex discrimination. “Article 12 of GC-I and GC-II and AP-I and II requires that all individuals be treated humanely without any adverse distinction founded on sex”. This principle applies to both GC-I and GC-II and AP-I and II. In summarizing, IHL has provided protection to women in their positions as combatants, civilians, and those hors de combat in armed conflict by giving them same rights as their male counterparts.⁴

Participation of women in hostilities is not a recent development. Throughout history, many women have played active or supporting roles in battle. For example, from the 17th to the 19th century, a significant number of female canteen-keepers accompanied armies to provide food and drink to soldiers, while others focused on the treatment of wounded soldiers behind the lines. However, it was not until 20th century that women began to participate more actively in conflicts. Women did not begin to participate in hostilities in a systematic manner until World War One. Women contributed to the war effort in Germany, e.g., even though they were not immediately absorbed into combat forces during World War 1. In addition to their job in arms factories, they were responsible for a variety of activities close to front, such as supply services and ammunition depots.

3. Helen Durham and Venessa Murphy. “Equal Treatment for Women in State Armed Forces: Three Practical Implications for Medical Care,” *Humanitarian Law & Policy Blog*, March 8, 2019. <https://blogs.icrc.org>. Accessed on 8 March 2022.

4. Ibid.

Women in England also fought in the war, either as paid or unpaid citizens or auxiliary, with 80,000 serving in female military units and others working as nurses.⁵

During World War II (herein after use as WW-II), women had a more active role in fighting. More than million women of Germany, England and Soviet Union actively participated in WW-II. French women did not mainly fight in French army, but they did provide various functions critical to the resistance's existence and survival, such as “supplying supplies, carrying out liaison missions, creating and distributing newspapers and pamphlets, hiding and transporting guns, and so on”.⁶

As far as Islamic law is concerned, during reign of Prophet Hazrat Muhammad (SAW) and in the era of Companions (R.A) the Muslim women had been participating in the various walks of life and they also participated in the fields of war and battles. Women participated in battles in the early years of Islam, not because of a lack of men at the time, but because of their desire for reward and sacrifice for the sake of Allah. This is evident from the report on authority of Hazrat Anas (R.A) that on day of battle of Hunain. Umm Sulaim (R.A) pulled out a dagger she was holding. Upon spotting her, Abiu Talha (R.A) revealed: "Prophet (PBUH), this is Umm Sulaim. She has a dagger in her hand". “Why are you carrying this dagger”, the Prophet of Allah (SAW) questioned. “I picked it up so I could rip open belly of any polytheist who came close to me”, woman claimed. The Prophet of Allah smiled on hearing this.⁷

5. Francoise Krill, “Protection of Women in IHL”. *IRRC* 25, no. 249 (December 1985): 337–63.

6. *Ibid.*

7. *Sahih Muslim* 1809a.

Additionally, her sincere love for jihad and willingness to sacrifice for the religion led her to openly request permission to participate in jihad from the Messenger of Allah, as recorded in Al-Bukhari, and in the statement of Hazrat Aishah (R.A). "I said, O Messenger of Allah! Why don't we go out and fight with you, because there is no better deed in the Qur'an than Jihad?" 'No, rather, best and most beautiful Jihad (for women) is an acknowledged Hajj,' he said."⁸ And, according to other narrations and Sahih Bukhari he answered, "No way. Your (women's) Jihad is an accepted Hajj, but it is Jihad for you."⁹

But this doesn't mean that Muslim women never participated in battles, or they were not allowed to participate in wars. In Islamic history we find many examples of female Muslim warriors, who not only participated in wars against kufr but also fought actively. Hazrat Nusaybah Bint Ka'ab was a renowned warrior known for her bravery on the battlefield. She was a member of the Banu Najjar tribe in Madinah and fought in numerous conflicts, including Second Bait-ul-Aqabah, Battle of Hunayn, war of Yamamah, Battle of Uhud and Treaty of Hdaybiyah. During Battle of Uhud, Nusaybah acted as a protector and companion of the Prophet Muhammad (SAW), who is said to have remarked that he (SAW) could always see her defending him whenever he turned. Despite suffering 12 injuries in this battle, Nusaybah continued fighting until she lost consciousness. Upon waking, her primary concern was for the well-being of the Prophet. In addition to her participation in the Battle of Uhud, Nusaybah also fought in the battle against Musaylamah Al-Kadthab, where she sustained many injuries and also lost her son.¹⁰

8. Sahih al-Bukhari 1520.

9. Sahih al-Bukhari 2875, Bulugh al-Maram 11/3.

10. Mahmood Ahmad Ghazanfar, *Great Women of Islam* (Texas, United States: Dar-us-salam, 2003), 207-214.

Hazrat Nusaybah (R.A) is just one example of the many brave women who have fought in battles throughout history. Other examples include Hazrat Umm Sulaym (R.A), Hazrat Safiyyah Bint Abdil-Muttalib (R.A), Hazrat Khansa (R.A), Hazrat Khawla bint al-Azwar (R.A), and many others. These women were known for their bravery and dedication to their causes, and their contributions to the wars they fought and participated in should not be overlooked.

Islam has kept the status, modesty, and sanctity of women at high rank. In the era of Holy Prophet (SAW), the women mostly used to cooperate and help the Mujahdin but they didn't directly participate in wars unless permission is given by Holy Prophet (SAW). Even while doing the treaties with other nations sanctity of women were kept in mind. An example of it can be found in Pact of Hudaibiyah (Sulah-e-hudaibiyah) where it was clause that any Muslim man in Makkah will come back to Madinah but there is no evidence of mentioning women in that clause or of return of women in this regard.¹¹ This shows that honoring women has a significant place in Islam, women's rights are considered top priority, and respecting women is a golden principle of Islamic teachings.

SIGNIFICANCE OF THE RESEARCH

International law has many laws and regulations when it comes to the role of the combatants. Although it has laws for women who are affected by conflicts, it lacks laws on their role as female combatants. Furthermore, the area of IHL related to female combatants still has many gaps in defining their role that need to be filled.

11. Abdullah Al Mamun, "Role of Treaty of Hudabiyah in International Relations," *MJIS* 3, no. 2 (August 2019).

On other side, in the Islamic law, role of women in war is different from that of international law. There are certain differences between the two laws. Available scholarly work discusses, in detail, the national and international level on role of combatants in armed conflicts, but there is still a need to do work on role of female combatants in armed conflicts. Many Muslim countries, such as Turkey, Pakistan, etc., have women in their armies, but its legal justifications according to Islamic law are missing; it seems that recruitment of female combatant fulfills liberal demand of gender inclusion. In addition, there is lack of research in this regard in Pakistan. Current research fills this gap in literature.

In order to investigate this phenomenon, the researcher will examine relevant rules of international law and Islamic law with a focus on role of female combatants. It will compare the legal systems of both laws along with their differences and similarities. Moreover, this research aims to explore the possibility of providing special protections for female combatants in context of armed conflicts. To do this, it will examine the laws and practices of several major states on this topic in the contemporary world. It will be interesting to see how international law and Islamic law interrelate and how Islamic law can fill gaps in international law related to female combatants because Islamic law on this is extremely thorough, polished, and evolved. Lastly, but not least, policy recommendation, based on the research, will be helpful of students and practitioners of law in Pakistan.

LITERATURE REVIEW

There is a significant amount of writing on the topic of combatant roles in both IHL and Islamic law. It is an important area of IHL. There is a gap of critical analysis in the literature

on the role of female combatants in relation to both International and Islamic law. Furthermore, there has not been a comprehensive comparison of these two legal frameworks on this subject. This research aims to fill this gap by focusing on this topic. So, in this section, the researcher will delve into the existing literature on the role of female combatants and the differences and similarities between International and Islamic law in regard to this topic. This will involve exploring and examining relevant sources to gain a deeper understanding of current state of knowledge on this subject. Basic purpose of this review is to identify any gaps in the current literature and to provide a foundation for the research being conducted.

Most important research in this area is conducted by Alexis, Ora and Jessica Trisko¹² Darden published in 2019. The author analyzes three different case studies to investigate the diversity of involvement of the women in non-state armed groups in different current socioeconomic and political situations: the Ukrainian civil war, conflicts in Middle East involving Kurdish groups, and civil war of Colombia. Why do women take part in combat? Regardless of the fact that female soldiers exist across the world, little is known about identities of these women, the causes of their involvement, how armed organizations employ them, and what happens to them after the war is over. The authors focus on three key characteristics of engagement of women in armed groups: mobilization, combat participation, and conflict resolution. In doing so, they shed light on the entry and exit of women from non-state armed groups. They also discuss policy implications of

¹² Jessica D. Trisko, Alexis Henshaw, and Ora Szekely, *Insurgent Women. Female Combatants in Civil Wars* (Washington D.C, United States: Georgetown University Press, 2019).

involvement of women in such conflicts, such as post-conflict programs. Although this book does not cover and compare the role of women combatants on the battlefield in terms of international law, it will nevertheless serve as an introduction to a different context of contemporary conflicts.

Another important research in this area is conducted by Orly Maya¹³. The scrutinizes 'principle of distinction' in IHL from a gendered perspective. This principle, which is a crucial aspect of IHL, determines who can and cannot be targeted in armed combat. It stipulates that civilians should not be targeted but allows for fighters and individuals actively participating in conflicts to be targeted. The principle defines what it means to be a combatant and a civilian, and outlines what constitutes direct participation in armed conflict. This book argues that principle, which was originally based on a gendered understanding of warfare with men as fighters and women as victims, does not adequately protect women in modern conflicts. The book uses the example related to participation of women in conflicts in Africa, known as 'new wars,' to examine the concept through a gendered lens and assess how well the principle protects women in these contemporary conflicts. It also raises questions about the appropriateness of the principle for regulating hostilities in future wars. This book is useful for understanding the workings of international law and laws of conflict, but it does not specifically address role of female combatants in war. It only focuses on the 'principle of distinction' and analyzes issues within that framework.

13. Orly Maya Stern, *Gender, Conflict, and IHL. Critique of "Principle of Distinction"* (Routledge Studies in Humanitarian Action Ser. Routledge, 2018).

"What Women Do in Wartime: Gender and Conflict in Africa"¹⁴ is a comprehensive examination of diverse experiences of women in African civil conflicts, edited by Clotilde and Meredith Turshen. This book brings together a range of sources, including news, testimony, and scholarship, to provide a nuanced view of roles that women play during war. Featuring contributions from women in countries such as Chad, Mozambique, Liberia, Sudan, South Africa, Namibia and Rwanda, this anthology delves into the complex ways in which women respond to conflict as both warriors and victims, and the groups they form in its aftermath. Additionally, the book explores issues of gendered political violence such as rape and other forms of violence in context of civil conflicts of Africa. While this book offers valuable insights into the experiences of African women during peace and war, it should be noted that it does not provide a comprehensive overview of the female combatants.

In her book "Girls Come Marching Home: Stories of Women Warriors Returning from War in Iraq,"¹⁵ published in 2009. This book also focusses on stories of America's warrior women as they return from Iraq and must deal with psychological consequences of battle while readjusting to life at home. This book emphasizes that these women may have left war, but conflict will always be with them. This book includes accounts of more than a dozen American soldiers returning home from Iraq war, representing various branches of military. However, the book does not cover legal aspects of female combatants' role in war.

14. Meredith Turshen, and Clotilde. T., *What Women Do in Wartime: Gender and Conflict in Africa*, 1st ed. (London, United Kingdom: Bloomsbury, 1998).

15. Kirsten Holmstedt, *Girls Come Marching Home: Stories of Women Warriors Returning from War in Iraq* (Pennsylvania, United States: Stackpole Books, 2011).

Another important research in this area is conducted by Synne Dyvik.¹⁶ In this book, author explores the various ways in which Afghanistan's counterinsurgency efforts were gendered during US-led war in Afghanistan from 2001 to 2014. This includes examining the invasion, population-based counterinsurgency operations, and the country's security after the withdrawal of combat forces by the US and NATO in 2014, as well as efforts to train a new Afghan army. The book delves into the complex relationship between gender and counterinsurgency, examining key counterinsurgency texts and military memoirs to understand how these two factors are intertwined. It also explores the various "military masculinities" that were utilized in counterinsurgency efforts, as well as the concept of "cultural sensitivity" and deployment of "Female Engagement Teams (FETs)". One key theme in the book is the concept of "kill and care," which refers to the conflicting and defining dynamic between physical violence and "armed social work" in counterinsurgency efforts. The author argues that this dynamic cannot be fully understood without taking into account the different gendered physical performances of masculinity and femininity that underlie the justification and execution of the war. Using the concept of "embodied performance," the book shows how insights into counterinsurgency and gendered warfare more broadly can be gained by examining everyday gendered expressions of conflict. It is worth noting that while this book serves as a critical examination of war, it does not specifically analyze the functional role of gender in wartime.

16. Synne. L. Dyvik, *Gendering Counterinsurgency: Performativity, Embodiment and Experience in Afghan "Theatre of War"* (Routledge, 2016).

Another research in this area is conducted by Muhamad S. Olimat¹⁷, in which he explores role of Arab women in Arab Spring and their contribution to significant changes happening in region. The book begins by examining the Arab World's democracy movement and the challenges it has faced since WW-II. It then looks at factors that contributed to emergence of Arab spring and emphasizes the ways in which women played various roles, including as participants, organizers, leaders, and victims. The book's main argument is that, while Arab women were a significant part of Arab Spring revolution, they did not benefit from their sacrifices. Even though they continue to be a part of change process, their gains, rights, and opportunities for engagement remain limited. Despite the fact that increasing women's involvement and rights does not seem to be a priority for revolutionary forces, women have made significant progress, particularly in Arab Spring countries like Yemen and Libya. This book includes case studies of Arab Spring countries and other countries impacted by the changes, including Saudi Arabia, Libya, Yemen, Jordan, Algeria, Morocco, Bahrain, Kuwait, and Egypt. It calls on revolutionary and reformist forces to pay special attention to the issues facing Arab women, as they are a vital pillar in process of reform, growth, peace, and stability in Middle East. However, book does not address the role of women in conflicts under IHL or examine any Islamic law related to these issues.

In his book, “Mecca: The Sacred City”,¹⁸ Ziauddin Sardar Ziauddin Sardar decodes Mecca's meaning and significance. Sardar investigates the theological conflicts and

¹⁷ Muhammad Olimat, ed. *Handbook of Arab Women and Arab Spring: Challenges and Opportunities, 1st ed.* (London, United Kingdom: Routledge, 2013).

¹⁸ Ziauddin Sardar, *Mecca: The Sacred City, 1st ed.* (London, United Kingdom: Bloomsbury, 2015).

rebellions in Mecca that have substantially affected Muslim culture, tracing its history from its origins as a "barren valley" in the desert to its expansion as a commercial town and abrupt emergence as the religious hub of a world empire. Mecca is an illuminating, lyrical, and hilarious blend of history, news, and narrative that represents everything profound and instructive, intriguing, and amusing about Mecca and brings us behind closed doors to one of the world's most important places today. He tells the narrative of Ghaliyya al-Bakmiyah of the Bakom tribe, one of the most daring Arab women of the nineteenth century. Under her guidance, Bedouin and Wahhabi tribes joined in the east of Mecca in 1811, defying Ottoman rule throughout the Arabian Peninsula. She stood up to the power of Muhammad Ali Pasha, who was determined to demolish this union. Her achievements began when she concealed the news of her husband's death. She resumed issuing commands to the soldiers and tribal chiefs on his behalf. She met with their leaders to discuss war and military concerns, in addition to giving services to and financing the army, as well as securing food for it. She also led the struggle to free the indigenous peoples from colonial powers. In 1813, Muhammad Ali's soldiers arrived on the outskirts of town and launched the first onslaught, which was repulsed by army of Ghaliyyaa. The Ottomans invaded again the next day and were defeated once more. Although the book gives an insightful experience of Makkah's history, but it does not cover it from aspect of Islamic history as such.

Reed and Jakana, authors of the research article "Social Origins of Female Combatants,"¹⁹ investigate the factors that influence whether or not insurgent organizations allow women to hold combat positions. They argue that a key factor is women's prior

19. Jakana L. Thomas, and Reed M. Wood, "Social Origins of Female Combatants," *Conflict Management and Peace Science* 35, no. 3 (May 18, 2017): 215–32.

involvement in social, political, and economic activities, as well as their willingness to take on combat roles when they become available. However, the article does not delve into the legal or international implications of women serving as combatants. In their research, Wood and Thomas seek to understand why some insurgent groups appoint women to combat positions while others restrict women to non-combat roles or exclude them entirely. They believe that examining the social, political, and economic experiences of women within these groups can provide insight into these decisions. Additionally, they examine the role of women's willingness to perform combat tasks when given the opportunity. By focusing on these factors, Wood and Thomas aim to shed light on the social origins of female combatants within insurgent organizations.

Another important research in this area is conducted by Barkat Ali, Dr. M. Sohail Thaheem, and M. Saeed Sheikh.²⁰ In this research article, authors explore the similarities and differences between Islamic ideals and the Geneva Convention. The authors examine the possibility of integrating these two distinct but related domains in order to create a common code on issue of women's rights in warfare. This research paper focuses on how Islamic law protects women from consequences of war, as well as how GC aims to protect women who are prisoners of war. In this research, authors attempt to create a unified code by reconciling these two independent standards for conducting war and protecting the human dignity of female warriors. The research compares Islamic ideals to the Geneva Convention in regard to rights of women warriors as prisoners of war in victorious

20. Barkat Ali, Muhammad Saeed Sheikh, Dr Thaheem, and M. Sohail, "Islamic Jurisprudence and GC: Searching Compatibility for Women Warriors' Rights" *Rahat Ul Quloob* 5, no. 1 (March 08, 2021): 96-105.

countries. However, this research paper does not go into detail about the role of female combatants on the battlefield and the Islamic perspective on this.

Despite the abundance of literature on role of female warriors in armed conflicts, there has been a lack of comparative analysis between Islamic and International law on this topic. Researchers has not been able to find a single comprehensive study that examines this comparison in depth. This lack of examination represents a gap in the current literature and the researcher is motivated to address this gap through their research. Basic aim of this study is to make a contribution to existing body of knowledge on this subject by providing a focused analysis of intersection of Islamic and International law on topic of female combatants. The researcher hopes that this study will enhance the existing literature on this topic within the fields of Islamic and International Law.

RESEARCH QUESTIONS

- 1) What has been role of female combatants in International and Islamic law?
- 2) What is legal status of a female combatants during armed conflicts in International and Islamic law?
- 3) What are similarities and differences between International and Islamic law on status of female combatants?
- 4) What are the ICRC's policies to protect female combatants during armed conflict?

RESEARCH METHODOLOGY

Furthermore, for the current dissertation, the researcher utilized nonobtrusive qualitative research method technique. Qualitative research allows researcher to collect available data in the form of documents without any problem. In this research dissertation, I reviewed

IHL as well as Islamic Law of War in order to compare, analyses and situate position of female combatants in both laws. Data were collected from google scholar, official websites of ICRC and JSTOR. Since data is available in the form of document, online as well as in hard forms, there were no practical problem faced by the researcher in this regard. I focused only on issue under investigation i.e., laws related to female combatants.

CHAPTER I: FEMALE COMBATANTS: LAW AND PRACTICE

1. Introduction

This chapter deals with the definition, types, responsibilities, legal protection, and legal status of combatants. Who is a combat in law, what are rights and responsibilities of the combat personae, and how IHL and Islamic Law deals with them are discussed in the chapter. This chapter is divided into three sections. Section one deals with legal definition of combat. Similarly, section two discusses, in detail, status of the combat in IHL and Islamic Law. While section three shed light on status and scope of female combatant in IHL and Islamic Law. As combatants in International Armed Conflicts (herein after use as IAC) are personnel of a party to conflict. Their right to actively participate in hostilities is the primary characteristic of their status.

In Non-International Armed Conflicts (herein after use as NIAC), concept of "combatant" and "combatant status" does not exist. This means that legal protections and privileges afforded to combatants in IAC do not apply in NIAC.²¹

While, in Islamic law of war, the term combatant defines person taking part in fighting (in way of Allah) and must enter in the combat willingly. Muslim jurists agreed that Muslim military forces must be composed of individuals who are debt-free and in good physical and mental health. Additionally, the warriors must volunteer to serve without being coerced and with the support or consent of their families rather than being

21. Ibid (n.9).

compelled.²² Islamic law provides shelter from military assault for civilians and non-combatants. In addition, “an enemy who withdraws from battle or enters Muslim land and asks for protection—whether formally or informally—may not be attacked and should be given *aman* (immunity)”.²³

1.2 Definition of Combatants in International Law and Islamic Law

In its literal sense, combatant is a person involved in fighting during a war on the authority of a state or party.

1.2.1 Definition in the International Law

IHL grants authority to use force to those who are designated as combatants. In contrast, they are legitimate military targets during times of hostilities. It is a legal status of a person engaged in hostility.²⁴ Rule 3 of customary IHL provides definition of combatants, it states that:

“During Conflict all members of the armed forces are combatants, except medical and religious personnel”.²⁵

Customary International Law (herein after use as CIL) in IAC recognizes this rule through state practice. State armed forces members may be considered combatants in both domestic and non-domestic armed conflicts for purpose of distinguishing them. However,

22. Ahmed Al-Dawoody, “Islamic Law and IHL: An Introduction to Main Principles,” *Islamic Law and IHL: An Introduction to the Main Principles*, (2017): 995–1018, doi:10.1017/S1816383118000310.

23. Ibid.

24. Bouchet-Saulnier Françoise, “Combatants,” *The Practical Guide to Humanitarian Law*. 2015. <http://guide-humanitarian-law.org>. Accessed on 9 September 2022.

25. ICRC, “Customary IHL - Rule 3. Definition of Combatants,” *IHL– Database*. <https://ihl-databases.icrc.org>. Accessed on 9 September 2022.

combatant status is only applicable in IAC. This rule goes back to Hague Regulations 1907, which states that:

“Armed forces of belligerent parties may consist of combatants and non-combatants”.²⁶

It is now set forth in Article 43(2) of AP-I of Geneva Conventions, 1977, which is also considered as the legal definition of “combatant”. Here, it is stated that.

"Members of armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of 3rd GC) are combatants, that is to say, they have right to participate directly in hostilities".²⁷

1.2.2 Definition of Combatants in Islamic law

In Qur'an and Sunnah, primary sources of Islamic law, word *Qital* is used to refer to 'combat'. Additionally, the broader term *Jihad* is also used. This latter term derives from *Jahad* or *Juhd*, which respectively means hardship and capability.²⁸ According to Haykal, this literal and general sense had been limited to struggling and making an attempt during times of conflict by only engaging in combat.²⁹

Initially, the term '*Jihad*' was only used to refer to fighting in the chapters of the Qur'an revealed in Makkah.³⁰ However, in the chapters revealed in Madinah³¹ the concept seems to have been primarily associated with combat. Haykal cites Hadith literature to

26. Hague Regulations 1907, Article 3 (cited in Vol. II, Ch. 1).

27. ICRC, “AP to GC, Aug. 12, 1949, and relating to the Protection of Victims of IAC (Protocol I)”, June 8 1977.

28. Interpretation is derived from Holy Quran 29:6, 29:8, 29:69 and 31:15.

29. M. Khair Haykal, *Al-Jihad Wa al-Qital Fi al-Siyasah al-Shariyah*, (Beirut, Lebanon: Dar Ibn Hazm, n.d.), 38-42.

30. Holy Quran 29:6, 29:8, 29:69 and 31:15.

31. The term Jihad appears twenty-six times in these verses.

show that the term Jihad was exclusively used to refer to fighting in context of Prophet Muhammad's (PBUH) sayings. According to Haykal, these traditions demonstrate that concept of Jihad in Islamic law evolved from a more general meaning to a specific one that pertains to combat and fighting in the path of Allah. Other words associated with combat in this context include Ghazw, Qital, and Harb.³²

As per Islamic law on only enemy warriors should be the target in war. Islamic law of war protects non-combatants and civilians from any sort of intentional harm and give protection to them. This principle of prohibition is clearly in stated in the verse of Holy Quran that says:

”وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا ۚ إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ”³³

"And fight in the way of Allah against those who fight you but do not transgress, indeed Allah does not like transgressors".

According to Qur'anic interpreters, “this verse commands that non-combatant enemies should not be fought and that an attack on non-combatants such as women and children is an act of aggression which displease Allah Almighty”. Consequently, based on numerous reports attributed to Prophet (SAW), Islamic law protects civilians and non-combatants against military attack. Based on his understanding of this verse, Al-Razi (d. 1209) defined combatants (al-muqatilin) as:

32. M. Khair Haykal, *Al-Jihad Wa al-Qital Fi al-Siyasah al-Shariyah*, (Beirut, Lebanon: Dar Ibn Hazm, n.d.), 39-43.

33. Holy Quran 2:190.

"They must be taking part in the fighting; anyone who is willing or prepared to fight cannot be described as a combatant, except in metaphor, until they enter into combat".³⁴

Furthermore, an enemy should not be harmed if he wants to withdraw from fighting or enter in Muslim land and request protection.

1.3 Legal Status of Combatants in International Law and Islamic law

Certain rights come with being designated as a lawful combatant, such as right to prisoner-of-war status in event of capture. Immunity of combatants is the other important benefit associated with being a combatant. If they behaved in line with laws of armed conflict, as defined by IHL, lawful combatants will not be held accountable for their warlike actions upon the end of conflict.³⁵

1.3.1 Legal Status of Combatants in International Law

The 3rd GC, which governs treatment of prisoners of war, establishes a particular regime of protection based on a person's status as a combatant. Concept of POWs is closely connected to concept of a combatant.

“Articles 13(1)– (2) of GC I and II, Article 4A (1)– (3) and (6) of GC III, and Articles 43–44 of AP-I” now contain applicable treaty provisions pertaining to combatant status. According to Geneva Convention III Article 4A, combatants include following groups of people: “(1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces; (2) Members of other militias

34. M. ibn ‘Umar al Razi, *Tafsīr Al-Fakhr al-Rāzī: Al-Mushtahar Bi-al-Tafsīr al-Kabīr Wa-Mafātīḥ l-Ghayb*, Vol. 5 (Dār al-Fikr, 1981).

35. Emily Crawford, “Combatants,” in the *Routledge Handbook of the Law of Armed Conflict*, ed. R. Liivoja, T. McCormack (Sydney Law School Research Paper No. 16/45, May 2016).

and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war; and (3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power”.³⁶

And as per 4A (6)

“Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had the time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war”.³⁷

Regarding their treatment while in custody, POWs get protections under the Third Geneva Convention, including safeguards against physical abuse and torture, right to be treated with respect for their person and honor, right to keep their personal property, right to write to and receive letters from family members, and right to receive support from ICRC.³⁸ Even if they do not meet requirements set forth in Article 4A of GC III, they get some safeguards and rights under Article 75 of AP-I to GC of 1949.³⁹

36. GC (III) relative to POWs, Aug. 12, 1949, art. 4A (1)-(3)

37. Ibid, art. 4A (6)

38. Articles 13, 14, 17, 18 and 71, of GC III of 12 August 1949 Relative to Treatment of POWs.

39. Article 75 of AP-I provide fundamental protections for all persons who do not receive special privileges under GC or AP. This article has customary status in International Law.

1.3.2 Legal Status of Combatants in Islamic Law

When we go through the history of Islam and Islamic laws, we find war as vital part of it. Jihad is one of highly regarded forms of worship in Islamic teachings. Khaled Ramadan Bashir argued in his book⁴⁰ that the Islamic laws of war precede the modern international law and probably had an impact on European international law in general and laws of war in particular. Also claimed by Jean Pictet that Muslims were crucial to the historical development of IHL.⁴¹

Nevertheless, in Islamic law of war, there is no distinction of IAC and NIAC. Criteria to be eligible for combatancy is simple. Muslim jurists agreed that Muslim military forces must be composed of individuals who are debt-free and in good physical and mental health. In addition, soldiers must volunteer to fight rather than being forced to do so with the approval of their families.⁴²

However, in the Islamic Law, the primary principle is that an individual's status as a combatant or non-combatant is determined by their level of involvement in the fighting, rather than their gender.

The Prophet (SAW) forbade killing of women and children in wars.⁴³

Ahl al-Zahir state that it is permissible to kill every non-Muslim in war, except for women and children. The reason for this is that they state that in Surat al-Tawbah, it is

40. Khaled Ramadan Bashir, *Islamic International Law. Historical Foundations and Al-Shaybani's Siyar* (Aberdeen, UK: Edward Elgar, 2018).

41. Jean. P., *Development and Principles of IHL* (Geneva, Switzerland: Martinus Nijhoff Publishers, 1985).

42. Sherifa Zuhur and Youssef H. Aboul-Enein. *Islamic Rulings on Warfare*, (United States: Strategic Studies Institute, 2004) 31-32.

43. This prohibition has been introduced in many traditions. For example, see: *Sahih Muslim, Kitab al-Jihad wa al-Seer*, chapter on the formation of Imam al-Imaam Ali al-Bawth and the will of Ayham, *Hadith* number 3261; *Sunan al-Tirmidhi, Kitab al-Seer*, Chapter *Ma Jaya fi Wasita fi al-Fawlat*, *Hadith* No. 1542.

ordered to kill all polytheists⁴⁴ and the prohibition of Prophet (PBUH), may Allah bless him and grant him peace, is an exception to rule.⁴⁵

On the contrary, the **republican jurists** also consider women and children as non-combatants who do not take part in the war, such as sheikh fani, monks living in monasteries isolated from rest of world, farmers working in the fields, etc⁴⁶. The reason for this is that in some other hadiths, which are not acceptable to the violent traditionalists, these people have also been mentioned. Also, these exceptions are mentioned in the decrees and orders of the Caliphs.

Four Conditions for the Status of Combatant (*Muqatil*)

Another issue is important here. It is mentioned above that under international law, status of a "combatant" is given to a person who fulfills certain conditions. A person cannot participate in war without fulfilling these conditions. What is the status of these conditions according to Sharia law? In the humble opinion of the researcher, none of these four conditions is in conflict with Shariat. The requirement that combatants use a distinctive dress or mark to distinguish themselves from non-combatants is an essential requirement of the prohibition of perfidy. As for the condition that the status of a combatant will be attained by the fighter who observes the manners of fighting, then it is obvious that there can be no two opinions regarding the observance of the manners of fighting that are obligatory in the Shariah, and the additional etiquettes that are prohibited. It is now clear

44. Al Quran 9:5

45. Imam Ali Ibn Ahmad Ibn Hazm Al-Zahri, *Al-Mahli Bal Atar*, vol. 7 (Cairo: Adarat Tabaa Al-Maniriyyah, 1934), 296-297.

46. Ibn Qudamah al-Maqdissi, *Al-Mughni*, vol. 8 (Cairo) 477; M. bin Ali al-Shaukani, *Niel al-Awtar Sharh al-Muntaqi al-Akhbar*, vol .7 (Beirut, Lebanon: Dar al-Fikr, 1994) 201.

that Muslims are allowed to enter into such agreements that contain such conditions and that they will be bound by the implementation of these agreements.

1.4 Status of Female in Combat Law

International Human Rights Law (herein after use as IHRL), IHL, and International Refugee Law (herein after use as IRL) are all legal frameworks that aim to address harms suffered by both men and women during times of armed conflict. These laws provide protections and remedies for individuals who have experienced harm, such as physical injury, displacement, or loss of property, because of armed conflict. They also establish standards for conduct of hostilities and treatment of civilians and other non-combatants, to minimize impact of armed conflict on civilians and to protect their rights. By providing a comprehensive set of legal protections and remedies, in this framework to address harms suffered by both men and women during times of war. However, this framework has not offered protection and reaction that women have needed due to discriminatory interpretation and implementation of these three strands of international law, as well as failure to acknowledge women's unique experience of armed conflict. Particularly, gender-based violence against women, such as sexual assault during hostilities, has been perceived as less serious than its non-gender-based counterparts. With these advancements in IHL, the previous lack of attention to the experiences of women in armed conflict has been significantly reversed. But there is still a lot to be done. IHL makes an effort to address the interests of women through purported "specific provisions."⁴⁷ As a result, IHL incorporates both broad protections for all combatants and civilians, as well as a variety of special

47. Judith G. and Michelle J., *Women, Armed Conflict, and International Law* (Leiden, Netherlands: Brill, 2001) 19-51. doi:10.1604/9789041116406.

protections for women during armed conflict. Researcher will carefully examine these clauses and look into how effectively the IHL regime protects women from harm.

The UN and its specialized agencies are increasingly enhancing protections provided to women by international humanitarian law but focus of this research is IHL which is dominated by ICRC and military establishment of States. Work of UN is having an impact on IHL's development. The researcher will also critically evaluate work of those organizations that concentrate on women and armed conflict. Reparations for all armed war victims are insufficient at the international level. However, when it comes to seeking redress, women have specific demands. Many of these demands are influenced by the inequality women face in society as a whole. In addition, women have a harder time getting justice when they don't have the same opportunities as males do.⁴⁸

The Islamic Shariah did not put the responsibility of defending the state and protecting it on the woman, but despite this, the desire to see the religion of Allah with its head high would bring her to the front of the battle against the enemy and she would also participate with men to win against disbelievers. Islam has certainly given freedom to women to do different things in society, but with limitations, an example of which can be seen in present-day Iran.⁴⁹ Even during the Prophet's time, some women used to trade, and a woman was assigned to supervise the market by Prophet (PBUH). But for now, our subject is jihad and women, in other words role of women in military services in their various capacities.

48. Ibid.

49. 20. ڈاکٹر سید رضوان علی ندوی، "الشريعة اکادمی کا کردار"، no. 1 (2009). <http://alsharia.org/2009/jan/jangi-markay-khawateen-dr-syed-rizwan-nadvi>

1.5 Scope of Female Combatants

Women's decisions to take part in armed combat, as well as their reasons and the opportunities and restrictions they encounter on the social, political, and religious levels, are extremely contextual.⁵⁰ Therefore, understanding the motivations of women in conflict is fundamentally challenging but also important factor.

Having female troops fighting alongside a combat unit may have certain benefits in modern warfare, as "winning minds" and gathering intelligence can occasionally prove more valuable than enemy deaths. When the US Army started using Female Engagement Teams in Afghanistan in 2010, women had a significant influence. These teams' primary goal was to engage more female populations in battle where it was impossible for male service members to do so. These teams carry out a variety of tasks, such as relationship development, intelligence research, and humanitarian work.⁵¹ There are evidence which suggests that women have had great success gathering intelligence from children and women in both Afghanistan and Iraq. For aim of counterinsurgency, the US military observes local conventions in these situations, which prohibit males from conversing with women who are not members of their family or who are not married to them.⁵²

Furthermore, across history, women have performed in combat roles in diverse societies. They have played a strong role in paramilitary forces.⁵³ Recent battles have

50. Judy El-Bushra, "Fused in Combat: Gender Relations and Armed Conflict" *Development in Practice* 13, no. 2 (May 2003): 252–65.

51. "Women in the United States Army," July 2018. <https://www.army.mil/women/history/>. Accessed on 16 October 2022.

52. Coalition for Iraq & Afghanistan Veterans. "FEMALE SOLDIERS SAY THEY'RE UP FOR BATTLE," April 2012. <https://web.archive.org>. Accessed on 16 October 2022.

53. Judith Gardam, "Law of Armed Conflict: A Gendered Regime" *STLP* 25, (1993): 177. This was retrieved from HeinOnline, published on March 8, 2021. <https://heinonline.org/> Accessed on 13 October 2022.

involved women and young girls fighting alongside “Palestinian fighters in Lebanon and Israeli-occupied territories, as well as in South Africa, Mozambique, El Salvador, Guatemala, Peru, Sri Lanka, the Philippines, and Eritrea”. In guerilla warfare, they have shown to be very successful at gaining close access to enemy people while avoiding detection.⁵⁴ Women have frequently participated in these movements as active and enthusiastic members.

Due to its importance in various capacities, recent policy reforms that support the integration of women into combat jobs have been implemented by the US military, in its NATO allies, and numerous other organizations. Furthermore, compared to national forces, many rebel groups have traditionally had a higher proportion of female combatants⁵⁵. Women have made important decisions to engage in conflict in both formal and informal ways all around the world. We must go beyond the simplistic notion that women are best categorized as "civilians" and, thus, as "victims" of war to comprehend variety of roles that women play in violent conflict.

1.6 Conclusion

Although it is obvious that Islamic law and IHL share some fundamental concepts, there are inconsistencies in many other specific areas that could result in additional casualties. When Islam and international law are incompatible, there may be a "conflict of worldviews," as in much of the discussion about Islam and human rights. However, many incompatibilities between Islam and contemporary IHL are the result of Islamic law

54. See note 46, 48-51.

55. Jessica T. Darden, “Assessing Significance of Women in Combat Roles” *Sage Journals* 70, no. 3 (September 2015): 454–62, doi:10.1177/0020702015585306.

scholarship's slow assessment and formulation of new rules to address novel issues in contemporary conflict that were not present in classical writings. Most often, this leads to a condition that both Islamic law and IHL detest: less protection being given to those who deserve it. In my humble opinion, there are two significant issues: a lack of detailed works on the connection between international law and fiqh al-siyar and a lack of extensive details in decisions for numerous dimensions of contemporary warfare not covered by traditional literature. As a result, a more proper investigation into the Islamic laws of war is necessary, and from standpoint of international law, a fair and detailed comparison of legal systems that make up international law is also necessary.

CHAPTER II: FEMALE COMBATANTS IN INTERNATIONAL LAW AND ISLAMIC LAW

2.1 Introduction

This chapter shed light on relevant scholarly literature related with perspective and history of female combatants. Scholarly literature talks about female combatant in various forms in various periods of known human history. It shakes popular idea that only men are fighter. This chapter is divided into two sections. First section describes history of female combatants considering International Law. Contrary to many popular misconceptions, only men do not fight in civil wars. Women also participate in armed conflict as both perpetrators and victims of violence, even though men make up majority of combatants. Women, for instance, have been heavily involved in Kurdish forces' military operations in Northern Syria, such as 2015 liberation of Kobane or ongoing resistance against Turkish military operations. Additionally, they participate in or have participated in the wars in Sri Lanka, Colombia, and Eastern Ukraine.⁵⁶ In consequence, various studies thoroughly analyze the recruitment of women and their functions during civil wars. A developing body of research also examines how presence of female combatants in armed groups impacts both dynamics of that group's behavior and overall conflict.⁵⁷ Additionally, several recent studies assert that inclusion of women enhances group legitimacy and permits the mobilization of larger combatants, peace keeping missions, and third-party help. It has been

56. Marius Mehr, "Female Combatants and Rebel Group Behaviour: Evidence from Nepal," *CMPS* 40, no. 3 (February 2022): 260-280.

57. Jakana L. Thomas and Kanisha D. Bond. "Women's Participation in Violent Political Organizations." *APSR* 109, no. 3 (2015): 488–506.

claimed that female warriors have particular motivations for engaging an armed conflict.⁵⁸ The motives of female combatants for joining an armed battle may be different from those of male combatants. But when analyzing the factors that influence whether someone will engage in armed conflict, greater consideration should be given to socioeconomic circumstances as well as the legal ethics of parties to conflict. Moreover, studies also shows that contemporary western females (having stable and secure life) joined militant groups because they found meaning in it⁵⁹. Similarly, female could have developed combat tendencies due to unemployment. But the question is that they are weather legal or illegal.

While section two sheds light on history and role of female combatants in the light of Islamic Law. It traces history of Muslim female combatants from the beginning of Islam to contemporary age with focus on times of Holy prophet (PBUH) and times of Khulafa e Rashadeen. This period, usually, remain controversial and subject to various interpretations. Indeed, various terrorist groups such as ISIS interpret wrongly early period of Islam and mold argument that suited them. Nevertheless, this point makes the point stronger that Muslim women, in early times of Islam, functioned as military combatants⁶⁰.

2.2 Historical Precedence of Female Combatants in International Law and Islamic law

The experience of women in an armed conflict is different from men. Although most women who experience armed conflict do so as civilians, but number of female combatants

58. Meredith Loken, "Rethinking Rape: Role of Women in Wartime Violence" *Security Studies* 26, no. 1 (2017): 60-92.

59. Maren Hald Bjørgum, "Jihadi Brides: Why do Western Muslim Girls Join ISIS?" *Global Politics Review*, 2, no. 2, (2016): 91-102.

63. Sahih Muslim 4680

is also rising. Men historically have been the main targets of military operations due to their combative nature. In the past, men's courage and suffering have been emphasized. The culture of warfare is fundamentally characterized by the admiration of the soldier. The trauma that women go through as a result of armed combat is typically ignored. When women in armed conflict are given attention, it is frequently manipulative and harmful to concerned women.⁶¹ The legal status of female combatants in armed conflicts under international law has evolved over time, reflecting changes in societal norms, legal frameworks, and the roles of women in the military.

2.2.1 Historical Precedence of Female Combatants in International Law

In historical perspective, women were not always prohibited from participating in battle in the past, although in most societies it has been seen as contrary to expectations of their natural duties.⁶² There are significant examples of women who broke the social norms, including Eleanor of Aquitaine and Joan of Arc. On the contrary, the knightly classes despised these women for their unfeminine actions. Additionally, women served in the Austrian and Italian forces during the nineteenth century, and some of them were awarded distinguished military awards.⁶³ But these females were exception to general rule.

Over 99 percent of the uncountable millions of soldiers who have fought in battles all over the world throughout history have been men. Some important instances from history regarding women role as combatant are as follow:

61. Judith G. Gardam, "Gender and Non-Combatant Immunity" *Transnational Law & Contemporary Problems*, no. 3 (1994): 345–349. <https://www.worldcat.org/>.

62. *ibid*, See note 46, 48-51.

63. James Turner Johnson, *Just War Tradition, and the Restraint of War. A Moral and Historical Inquiry*, Princeton, U.S: Princeton University Press, 2019), 137-140.

The **Dahomey kingdom**, today known as Benin, was a slaving power of West Africa in 18th and 19th centuries. It is the most significant historical example of female soldiers. It offers the lone example of an established regular army with significant proportion of female members. Dahomey had a terrible reputation for being a warlike nation and was always short on labor due to war and slave losses. The king set up all-female forces that were equivalent to the male ones but were formally under his direct control and resided in the palace. Just like the males, the women trained and engaged in combat, and their bravery and quick reflexes helped to win crucial battles. There is no doubt that the admission of women to Dahomey's army strengthened its armed forces. It dominated military landscape in the area.⁶⁴ Others, however, did not follow this practice as precedent.

During **WW-I**, women played a significant role in supporting industrialized combat, breaking down the pre-war global feminist anti-war solidarity. While serving in non-combat roles, the first women were accepted into the US and British forces. Examples of women who fought include Flora Sandes, an Englishwoman, and Kady Brownell, who earned the title "Heroine of Newbern" after risking her life to protect Union soldiers during American Civil War.⁶⁵ During World War I, Maria Botchkareva from Russia led a "Battalion of Death" that included several hundred women who participated in one battle. However, they were mostly used to shame men into fighting when morale and discipline had declined.⁶⁶ WW-I marked a turning point in participation of women in military. Women in various countries began to serve in support roles close to combat zones. Their

64. Smithsonian Magazine, "Dahomey's Women Warriors," (Smithsonian Institution, September 23, 2011), <https://www.smithsonianmag.com/> Accessed on October 07, 2022.

65. Sara Bartlett, "Kady Brownell, a Rhode Island Legend" *Minerva: Quarterly Report on Women and Military* 19, no. 2 (2001): 39–58. <https://go.gale.com/>.

66. Susan R. Sowers, *Women Combatants in WW-I: A Russian Case Study* (Strategy Research Project, U.S. Army War College, 2003).

roles included nursing, transportation, and communication. The experience of women during World War I led to increased recognition of their contributions, but it did not lead to comprehensive legal changes regarding their status as combatants.

Women took on new combat duties during **World War II**, including operating anti-aircraft weapons in numerous nations. During World War II, around 8% of Soviet Union's Red Army were women who served in roles of anti-aircraft gunners, pilots, and front-line nurses. The "night witches," a women's aviation regiment, used improvised air strips to attack the German front lines at night while flying low-cost and highly flammable biplanes in a racetrack pattern." A notable school trained Soviet women to be snipers. Women's significant participation in the Soviet example appears to be explained by ideology and a lack of available labor. In this and other cases, the role of women as combatants also served as propaganda icons for the desire of state for victory.⁶⁷ After World War II, there was a growing recognition of contributions of women in military, and many countries began to expand opportunities for women to serve in various roles, including combat roles.

Women have traditionally and continue to participate more often in **irregular forces** such as guerillas, terrorist organizations and militias, rather than in regular uniformed armies. The distinction between military and civilian life is often blurry in these circumstances. Some of these militaries also adhere to egalitarian ideologies that support the inclusion of women in combat. Women have proven to be valuable assets in various roles, including as spies and suicide bombers, due to their ability to seem nonthreatening and to take advantage of laws protecting civilians. Propaganda may also highlight women's

67. Gordon Williamson and Ramiro Bujeiro, *WW-II German Women's Auxiliary Services*. (Osprey Publishing, 2003), doi:10.1604/9781841764078.

combat roles as symbols of sacrifice and unity, as demonstrated by the well-known image of a Vietnamese woman guerilla holding a baby in one arm and a rifle in the other.⁶⁸

The **Geneva Conventions** are a set of international treaties that established humanitarian rules of armed conflict. They were developed in response to the horrors of war and aimed to protect wounded soldiers, prisoners of war, and civilians. The 1st GC in 1864 focused on treatment of wounded and sick soldiers on the battlefield and established the Red Cross as a neutral humanitarian organization. The 2nd GC (1906) extended protections to wounded, sick, and shipwrecked members of the armed forces at sea. The 3rd GC (1929) dealt with treatment of POWs. The 4th GC (1949) addressed the protection of civilians during armed conflicts. Article 32, 34, 49, 27 and 72 of GC 1949 deals with protection of women.⁶⁹

The GCs themselves did not explicitly mention the legal status of female combatants. They primarily focused on treatment of wounded soldiers, prisoners of war, and civilians. However, as armed conflicts evolved and more women began participating in combat and support roles, the interpretation of the Conventions evolved as well. Principle of non-discrimination became a central tenet of IHL. The APs to GCs, specifically Protocol I (1977) and Protocol II (1977), expanded protections and recognition of rights of individuals involved in armed conflicts. These protocols reinforced principles of non-discrimination and protection for all combatants, irrespective of gender.

68. "Vietnam War Fast Facts," CNN (Cable News Network, April 17, 2023), <https://www.cnn.com/2013/07/01/world/vietnam-war-fast-facts/index.html>.2013. Accessed on 7 October 2022.

69 Vinay Aggarwal, Aditi. "Women in Armed Conflicts: Susceptible or Prey?" *NIU International Journal of Human Rights ISSN* (2018): 2394-0298.

The legal status of female combatants continues to evolve, with changes occurring at both the national and international levels. International organizations, such as UN, have advocated for gender mainstreaming in peace and security efforts, promoting the participation and rights of women in conflict resolution and peacekeeping operations. Hence, legal status of female combatants in armed conflicts under international law has evolved from a lack of explicit mention to the recognition of non-discrimination and protection of all combatants, regardless of gender, in international humanitarian law. While the Geneva Conventions themselves do not explicitly mention female combatants, subsequent protocols and evolving interpretations of international law have expanded protections and recognition of rights of women in military. These changes reflect broader societal shifts towards gender equality and recognition of women's contributions to armed forces and humanitarian efforts during conflicts.

2.2.2 Historical Precedence of Female Combatants in Islamic Law

Due to ignorance of role of women in early history of Islam, it has become common knowledge that women have no role in Islamic Jihad, therefore their military services in today's times are unnecessary and against Islam. But a thorough study of Islamic history shows that the reality is opposite. This is the aspect of our history that not only many educated but also mostly Islamist people are not aware of. It is proven from the books of Hadith, biography of Holy Prophet (PBUH) and history that women used to participate in some battles during time of Holy Prophet (PBUH) and even in time of Holy Caliphs (R.A) and so on. Some important instances proving the participation of women in combats are given below.

Women have participated in combats since **time of the Prophet (PBUH)** as nurses⁷⁰ and carriers of the dead and injured⁷¹, cooks⁷², water bearers⁷³, general servants⁷⁴, and even as fighters in some life-or-death situations⁷⁵. Despite insistence of later jurists that such female volunteers should be of mature age, we have instances of young and even unmarried girls participating in the expeditions of the Holy Prophet (SAW)⁷⁶. Hazrat Ayesha (R.A), participated in the Battle of Uhud with a number of other female volunteers while she was very young. They served the wounded and provided them with water. A Sahih Hadith Narrated by Hazrat Anas (R.A):

“On the day (of the battle) of Uhad when (some) people retreated and left the Prophet, I saw `Aisha bint Abu Bakr and Um Sulaim, with their robes tucked up so that the bangles around their ankles were visible hurrying with their water skins (in another narration it is said, "carrying the water skins on their backs"); then they would pour the water in the mouths of the people and return to fill the water skins again and came back again to pour water in the mouths of the people”.⁷⁷

Umm Atiya Ansariyyah (R.A) says that I accompanied the Messenger of Allah (PBUH) in seven campaigns (Ghazwat), stayed in the tents of men in their absence, cooked food for them, treated the wounded and looked after the sick.⁷⁸

70. Sahih al-Bukhari 2882.

71. Ibid, 2883.

72. Sunnan Ibn Maja 2856.

73. Sahih al-Bukhari 2882, 2883, 3811.

74. Ibid 2882, 2883, 3811

75. Sahih Muslim 4680.

76. Abd Al Malik Ibn Hisham, *Sirah by Ibn Hisham* (Cairo, Egypt: Al Falah Foundation, n.d.) 268.

77. Sahih al-Bukhari 2880.

78. Sunnan Ibn Maja 2856.

Many Female Companions went to Madinah after the war to heal and serve the wounded Mujahideen of Uhud. It is a tradition of Tabrani:

لَمَّا كَانَ يَوْمَ أُحُدٍ وَانْصَرَفَ إِلَى الصَّحَابَةِ يَعِينُونَهُمْ وَكَانَتْ فَاطِمَةُ فِي مَنْ خَرَجَ

“On the day when the battle of Uhud took place and after the battle the polytheists returned, the women went to help the Companions; and Hazrat Fatima (R.A) was also among them”.⁷⁹

So, on that day the Holy Prophet (PBUH) was injured, and Hazrat Fatima (R.A) filled his mat with the ashes.

Hazrat Umm Amara (R.A), a famous Companion, participated in the Battle of Uhud, and while the Muslims were victorious, she poured water into a musket and watered the people, but when the feet of the Muslims were trampled, she reached the Prophet (PBUH) and safeguarded him (SAW).⁸⁰ She said that "I was busy on the field of battle with other Companions on the day of Uhud, giving water to the Mujahideen". In the beginning everything was fine, but when the dice of war turned, I worried about the Holy Prophet (SAW). I saw that he (PBUH) was standing alone outside the front, so I threw my musket and took out my sword from its sheath and ran towards the Prophet. My sword 'Abdar' was willing to show the essence of its loyalty. I moved forward around the Holy Prophet (PBUH) and kept stabbing the infidels to prevent them from coming near the Holy Prophet (SAW), but then suddenly Abdullah bin Qamiyyah struck him. I lunged and stabbed him from behind, and he turned back and charged at me, tearing a piece of flesh from my neck.

79. Fatouh Al Bari: 287/7.

80. *Sirat Ibn Ishaq*, Urdu translation, 480.

Nevertheless, I struck him many times, but he was wearing armor. Then I hit his horse's legs and he felt awake in the gorge. At the same time, some companions (R.A) had reached the Prophet (PBUH). My deep wound was bleeding. The Prophet (PBUH) said to my son in a loud voice, "O son of Umm-e-Umara! Seek your mother". On this, the son came running towards me and applied the ointment".⁸¹ Hazrat Umm Amara (R.A) also participated in the pledge of allegiance to Rizwan, Khyber, Yamama and the conquest of Makkah after Uhud. She showed the same qualities of bravery that she had shown in the battle of Uhud.

In addition to Hazrat Umm Amara (R.A), the participation mention of Hazrat Umm Atiya (R.A) and Umm Saleem (R.A) etc., in the battle of Uhud and Khyber in the books of biography and history is also found. Imam Bukhari even made a special chapter in the 'Kitab al-Jihad' about women's jihad or military service. Is. This chapter is chapter 65 and its title is "غزو النساء وقتالهن مع الرجال" (Women participating in Ghazwat and fighting alongside men). Apart from this, in several other chapters, he has also mentioned women treating the wounded in Jihadi battles, providing water, and transporting the martyrs to Madinah. Several hadiths in chapter 65 of Sahih Bukhari address the involvement of women in warfare. These hadiths provide guidance on roles and responsibilities of women in times of armed conflict and principles that should govern their involvement in military operations.⁸²

The Jihadi battles that took place in Iraq and Syria immediately **after Holy Prophet (PBUH) era**, during the reign of Hazrat Abu Bakr, saw a number of women participations

81. *Tabaqat Ibn Sa'd* 460/8

82. Sahih Al Bukhari Chapter 65

in them and they participated actively in these battles, especially the battle of Yarmouk, which was an extreme battle against the Roman rulers of Syria and Palestine. It was a decisive battle, and it has a great place in the first wars of Islamic history, because after the victory of the Muslims in this war, the Roman rule was ended in the country of Syria, Palestine and Jordan.⁸³

Waqdi⁸⁴ mentions twenty-five women who took active part in this battle and displayed essence of their swords. Notable among them is Khula bint al-Azur (R.A), who killed five infidels on one occasion, and Afraa bint Ghaffar, who killed four infidels, and the bravery stories of Umm Hakeem (R.A) and Umm Aban (R.A) were also narrated in *Fatuh al-Sham*. In addition to these women, according to Waqidi, many women from Lakham tribe, Jazam tribe and Kholan tribe also participated in the battle of Yarmouk. One of the duties of these Mujahideen women was to take tent poles in their hands behind the army in the battlefield and collect stones in front of them, and if the Mujahideen started running back after being defeated, they would throw stones at these Muslims and kill them. Beat the horses with sticks and send them back to battle. One of their tasks was to take the children who were with them in their hands and show honor to the defeated Mujahideen that you should fight for your wives and children. Some women also used to sing battle hymns to boost the courage of the Mujahideen. The author of *Fateh al-Sham* has quoted a few verses of the anthem of Hazrat Khula bint al-Azur, which she used to sing in a war tone:

83. 88 عصفري. تاريخ خليفه بن خياط

84. Allama Waqdi, *Kitab Fattouh Al-Sham. Muslim Women in Battle*, 186. <https://al-maktaba.org/book/12045/206#p1>.

يا باربا عن نسوة ثقات
لها جمال ولها ثبات
تسلموهن الى الهنات
تملك نواصينا مع البنات
اعلاج سوق فسق عتاة
ينلن منا اعظم الشتات

Hazrat Umm Amara (R.A) participated in the Battle of Yamamah with her son during Abu Bakr's reign as Caliphate, and one of her hands was cut off in that battle.⁸⁵

Umm Hakeem (R.A), the wife of Ikrama bin Abu Jahl (R.A), participated in the battle of the Muslims with Romans. Ikramah (R.A) was martyred in the battle of Ajnadin, after four months and ten days of Iddah, she was married to Khalid bin Saeed (R.A) at a place called Marj Safar. On the second day of the marriage, Khalid bin Saeed (R.A) gave a feast. The people had not even finished the feast when the Romans started lining up. When Battle was at its peak, Umm Hakeem (R.A), who still had the signs of the wedding night, took a pole of her tent, and jumped into the field and killed seven people of the enemy that day.⁸⁶

Asma bint Yazid Ansari (R.A) was among the narrators of hadith from the Prophet. Her surname was "Umm Salma" and she was called "Khatiba al-Nisa" meaning the woman

85. Allama Waqidi, *Al-Maghazi*, Vol. 1, 269; Ibn Sa'd, *Al-Tabataq al-Kabeer*, Vol. 8, 304

86. الاستيعاب في اسماء الاصحاب تذكره ام حكيم

who speaks.⁸⁷ At the hands of Asma bint Yazid Ansari (R.A), nine Romans had to taste death in the battle of Yarmouk.⁸⁸

2.3 Role of Female Combatants in Contemporary Era

In recent years, women have participated in regular combat roles. Except for the United States, 15 out of the 24 members of NATO no longer prevent women from participating in combat. The first restrictions to be lifted were those in France, Canada, Denmark, and Norway. Typically, women join the military most slowly in infantry and armor. According to data, “proportion of women serving in armed forces varies by country, from less than 4% in Poland, Turkey, and Italy to more than 14% in Latvia, Latvia, Slovenia and Hungary, and around 16% in Canada, France and the USA”. Women serving in the military is only one recent example of how gender roles have changed. Despite the fact that most nations around world allow women to serve in military in some capacity, only Norway and Sweden enlisted men and women under the same formal requirements in 2018⁸⁹. Several other nations have laws that permit women to be enlisted into their armed forces, but there are some differences, length of service, including service exemptions and more. Men and women may serve on a voluntary basis under equal circumstances in nations without conscription.⁹⁰

87. Hasoon and Mashkoor, *An-Nisa al-Mu'minat*, (1379) 149.

88. 335/ 4: الاصابه في تمييز الصحابه

89. Alma Persson and Fia Sundevall. “Conscripting Women: Gender, Soldiering, and Military Service in Sweden 1965–2018.” *WHR* 28, no. 7 (March 22, 2019): 1039–56, doi:10.1080/09612025.2019.1596542.

90. “In-Depth Women Solidiers - Women in the Military,” CBCnews (CBC/Radio Canada), accessed October 7, 2022, <https://www.cbc.ca/news2/background/military-international/>.

Israel (the occupied Palestine) has lifted most restrictions on women in combat roles, although their numbers are still low⁹¹. In Eritrea, women have served in regular uniformed infantry during trench warfare against Ethiopia, where they previously fought in irregular units during Eritrea's secession from Ethiopia. A small number of women have disguised themselves as men and participated in combat in uniformed armies. Their gender was sometimes not revealed until after their deaths or serious injuries, and in other cases, they were buried on the battlefield.⁹² Women are starting to take on combat roles in current peacekeeping forces from the AU⁹³, EU⁹⁴, and United Nations (UN), after being almost absent in previous decade. For instance, in 2009, a combat battalion of women from Ghana deployed to Liberia. UN Security Council (herein after use as UNSC) has promoted inclusion of women in peacekeeping operations, but contributing nations still decide the formation structure of the forces.⁹⁵

Despite comprising a small portion of the fighting force, women are often found participating in modern civil wars. Examples include the “Tamil Tigers of Sri Lanka, who pioneered the use of women as suicide bombers, West African rebels, Indian and Nepalese Maoists, Palestinian militants, and al-Qaeda”⁹⁶. Al-Qaeda in Mesopotamia's statement,

101. Levin, D. S. “You’re Always First a Girl”: Emerging Adult Women, Gender, and Sexuality in the Israeli Army. *Journal of Adolescent Research*, 2010, 26(1), 3–29.

92. Gebru Tareke, *Ethiopian Revolution: War in Horn of Africa*, (New Haven, Connecticut: Yale University Press, 2009) 341-345.

⁹³ “African Union”

⁹⁴ “European Union”

95. Peace Women. “Liberia: Ghanaian Soldiers Lead the Way in Liberia | Peace Women,” February 3, 2015, accessed on October 07, 2022, <https://www.peacewomen.org/>

106. Jamon K. Doost, “Women of Islamic State: Evolving Role of Women in Jihad” *Counter Terrorist Trends and Analyses*, 2016 8, 9 21-26.

"Are there no males, so that we have to recruit women"? demonstrates the propaganda value of female fighters.⁹⁷

2.4 Female combatants; Various Forms

Another important fact regarding female combatant is that women from all areas of society, are part of combat in various ways. Particularly western agenda of liberating women created hyper response in Muslim countries. For instance, inferior identity complex lead to violent activities. Muslim women took part as a combatant in ISIS due to achieve higher identity⁹⁸. Furthermore, as discussed by Khelghat-Doost, female combatant in ISIS military makes a significant sum of total. The important fact is that these females are as strong ideologically as their male counterpart combatants. They do not constitute merely military, their role, as history is facing, emerges as suicide bomber as well. This means that female combatant has full capacity to be part of military as their male counterpart have. The literature shows that Muslim women serve in military for Jihad. They have various tasks to perform along with fighting. Usually, their task remains supportive one. The 21st century, even, face the term sex jihadis. In addition, female combatants for jihad, for terrorist organizations were enough in number to represent their spirit collectively. According to a report⁹⁹:

"There is a global cohort of over 73 000 women and children (10 000 of them foreigners) in Kurdish camps who surrendered after fall of Baghouz".

97. Christopher Dickey and Jeff Charles. "Women of Al Qaeda." Newsweek, December 12, 2005. Accessed on 7 October 2022, <https://www.newsweek.com/women-al-qaeda-113757>.

98. Sara J. Jacobsen, "Calling on Women: Female-Specific Motivation Narratives in Danish Online Jihad Propaganda" *Perspectives on Terrorism* 13, No. 4 (2019): 14-26.

99. Lydia Khalil, "Behind Veil: Women in jihad after caliphate" *LIIP* (2019).

2.5. Case Study of UK, USA, and France

In the **United Kingdom**, legal status of female combatants in armed conflicts is regulated by domestic law and IHL. In the UK, “British Women are to serve in close combat positions for the first time, after the UK PM David Cameron announced a ban on them fighting at the front line would be lifted”.¹⁰⁰ The UK Armed Forces have allowed women to serve in combat roles since 2016. This policy change has granted women equal opportunities to serve in frontline combat positions alongside their male counterparts. Similar to many other countries, women have historically played support roles in the UK military, but they were restricted from serving in direct combat roles. Over the years, the UK has made policy changes to expand the roles available to women in the armed forces. These changes were aimed at breaking down barriers and promoting gender equality. The UK officially opened all military roles, including frontline combat roles, to women in 2018. This means that women can now serve in roles previously closed to them, such as infantry, armored units, and special forces.¹⁰¹ The UK is a party to various international treaties, including GCs, which outline legal protections afforded to combatants, regardless of gender. Female combatants in the UK military are entitled to these protections under international law.

In **USA**, legal status of female combatants in armed conflicts is governed by both domestic and international law. In 2013, the “US Secretary of Defense Leon Panetta” announced the plan to lift the ban on women in combat. Later on, in 2015, “Secretary of Defense Ash Carter” formally announced and removed ban on women serving in combat roles.¹⁰² This

¹⁰⁰ Jones, Bryony. “Combat roles for British women soldiers on front lines” Available at: <https://edition.cnn.com/>.

¹⁰¹ HOC Library, “Representation of Women in Armed Forces” [2021] Available at: <https://commonslibrary.parliament.uk/>.

¹⁰² Moore Emma, “Women in Combat: five-year status update” (Published by CNAS, 2020).

policy change marked a significant milestone in allowing women to serve in a wider range of military roles. After the combat exclusion policy was lifted, women were allowed to serve in combat roles and apply for positions in units such as infantry, armor, artillery, and special forces, among others. Female combatants in US military are subject to same laws, regulations, and protections as male combatants under IHL, such as GCs.¹⁰³

Women have a long history of serving in **French military**, often in support roles. During WW II, women played crucial roles in French Resistance and as part of the Free French Forces.¹⁰⁴ France has a long history of women serving in various capacities within its armed forces, including combat roles. The legal status of female combatants in France is determined by domestic law, which allows women to serve in combat positions. France is also a party to international humanitarian law agreements, such as GCs, which ensure protections for all combatants, regardless of gender. French military policies have evolved over the years to accommodate the inclusion of women in combat roles, and they are subject to same legal standards and protections as male combatants under international law.

Female combatants in the French military have achieved recognition for their skills and dedication, with some rising to leadership positions in their respective branches. France has worked to promote gender equality within its armed forces, ensuring that female service members have the same opportunities for training, career advancement, and leadership roles as their male counterparts.¹⁰⁵ The French military provides support and

¹⁰³ Ibid

¹⁰⁴ Andrew Orr, *Women and French Army during WW I and II, 1914–1940*. Indiana University Press, 2017.

¹⁰⁵ David Hopkin, "Female Soldiers and Battle of Sexes in France: Mobilization of a Folk Motif." In *History Workshop Journal*, vol. 56, no. 1, pp. 78-104.

training to female combatants to ensure they are prepared for their roles and can excel in their careers.

2.6. Women status as Prisoner of War

The 3rd GC 1929 deals with the treatment of POWs. The GCs are a set of international treaties that establish humanitarian rules of war. The 3rd GC (1929) specifically addresses treatment of POWs. Gender is not a determining factor for POW status; both male and female combatants are entitled to same rights and protections. The IHL states that the “all prisoners have right to treated respectfully, country of origin, irrespective of rituals or religious beliefs, and they should be protected from any threat or physical harm”. Article 14 of the GC 1929 protect the women. According to this Article “women should have same right to respect as men, and they should be treated as fairly as men, despite their gender”.¹⁰⁶ Article 27 of GC 1949 also protected the rights of women. Despite these provisions, the women suffered unspeakable horrors at hands of invading armies. For example, in **Iraq** “Taa’mim al Izzawi is an active Iraqi Attorney, and she is working for women rights; documented the physical abuse that women face in Iraqi prisons in a 04-page report”. According to this report, women prisoners were raped in Abu Ghraib Prison.¹⁰⁷ In this report, she stated that during prison, the Iraqi women suffered extensive torture and persecution.¹⁰⁸ Another important example of **Palestinian** women. According to research report, Palestinian women detainees are exposed to many methods of torture. These methods include “beaten with hot iron bars, burned with cigarettes, tearing off their clothes,

¹⁰⁶ Article 14, GC 1929.

¹⁰⁷ Aditi Vinay Aggarwal, "Women in IAC: Susceptible or Prey" *NIU-IJHR* (2018): 2394-0298.

¹⁰⁸ Ibid

beating and locking them in cells of Israeli women prisoner, raped and tortured with electricity”. One of Palestinian women prisoner states that “Israeli authorities locked her in cell where Jewish prostitutes was detained; one of them attack on her and beat severely, tore off her clothes in front of other police officers”.¹⁰⁹ She argued that the mistreatment and torture are violation of her rights under 1st para. Of Article 3 of GC 1949 (4th GC).

2.7. Conclusion

Women have seldom, but often efficiently, participated in combat. Women can fight through the rigors of battle and maintain their composure under fire. They can also kill at close range or as snipers. It is surprising that so few countries have ever tried utilizing female warriors given this record of success. Protecting the masculinity values that frequently drive men to fight in war could be the cause. The effects of armed conflict on women as combatants take many forms. Indeed, as they fill responsibilities that have traditionally been filled by men, it can be a time of empowerment for certain women. The new circumstances that women face today might help them leave the domestic sphere, take on obligations in public sector, and grow in independence and self-respect. Some patriarchal societies have benefited from military warfare, according to commentators. However, the advancements that women may have made during conflicts are frequently lost once peace returns. In some circumstances, such as when fundamentalist revolutionary forces come to power, women may lose liberties they have previously possessed. Overall, nevertheless, the discussion above highlights the catastrophic, all-encompassing, and

¹⁰⁹ Ibid

different effects that armed conflict has on women as well as how difficult it is to address the humanitarian issues that women caught up in violence face.

CHAPTER III: CONTEMPORARY LEGAL DEVELOPMENTS AND METHODOLOGY

3.1 Introduction

History plays vital role in shaping present. In other words, present was prelude to history. This chapter explores contemporary legal development regarding female combatants in the light of historical records. As far as Islam is concerned, the Islamic Shariah did not put the responsibility of defending the state and protecting it on the woman, but despite this, the desire to see the religion of Allah with its head high would bring her to the front of the battle against the enemy and she would also participate with men to defeat the disbelievers. Besides, it is true that either out of tradition, out of need owing to certain circumstances and conditions, or even voluntarily, women have been part of warfare throughout history. Both during peacetime and during times of conflict, the conventional roles of women and men have shifted. Armed combat is not just a male-dominated activity. More and more women are taking part in combats nowadays, both in regular and irregular armies. Some states are renowned for having growing number of female combatants i.e., USA, Canada, Africa, and Eritrea armed forces. In Asia, countries like Korea, China, Sri Lanka, India, Nepal, and even Pakistan allow women to fight. 4,000 women are currently estimated to be serving in Pakistan's armed forces.¹¹⁰ According to estimates, women made up about

110. "Women in the Pakistan Armed Forces," Military Wiki, accessed November 15, 2022, https://military-history.fandom.com/wiki/Women_in_the_Pakistan_Armed_Forces.

40% of People's Liberation Army in Nepal, which opposed the government.¹¹¹ In 2022 three nations namely Norway, Sweden, and the Netherlands conscripted men and women under identical official conditions. Several other nations have legislation that permit women to be enlisted into their armed forces, but there are notable distinctions, including length of service, exemptions in service, and more¹¹². For a variety of reasons, including disparities in physical prowess between the sexes and problems with gender identification for both men and women, the new combat positions are quite divisive. More women are fighting today than ever before, so it is important to examine current laws of war and how it is being applied from a gender viewpoint.

Though, significant research has already been done in this area, most notably the important study "Women facing War" by the ICRC¹¹³. Chapter situates the findings from this study also reveal the existence of female combatants, remembering varied experiences women have had while fighting. Moreover, recognition and treatment of female combatants in international law is a topic that is still being debated and developed. The recognition and protection of female combatants in international law still has a long way to go. Ensuring that female combatants receive the same rights and protections as male combatants is crucial for the advancement of a fair and progressive international legal system. The chapter also discuss methodology of the current dissertation.

111. Jerry Indrawan, "Women in War: Being Protected or Combatant?" *JHI* 4, no. 1 (2015): 78–87, doi:10.18196/hi.2015.0068.78-87.

112. See note 91.

113. "Women Facing War – an ICRC Study," *International Review of the Red Cross* 83, no. 844 (2001): 1174-1175, doi:10.1017/s1560775500183622.

3.2 Legal Status of Female Combatants in International Law

Historically, role of women in warfare has typically been limited to non-combatant roles. This is because when many international laws were created, armed conflicts were usually between States with male-only militaries. Women and children were usually relegated to support roles, and there was no formal combatant status for military members. As a result, the laws that were developed primarily focused on protecting those who were not directly involved in fighting.¹¹⁴

International Law evolved over time to take into account situations beyond conventional wars and now includes considerations for guerrilla warfare, civil wars, insurrections and other types of armed conflicts.

Role of female combatants during armed conflicts is an issue of growing interest and importance in context of international law and especially IHL. Number of cases of women involved in conflicts as soldiers and fighters is on rise.¹¹⁵ The GC and their AP-I and II set out the basic rules for protecting women involved in armed conflicts¹¹⁶. However, the scope and meaning of these instruments are yet to be clarified.

Legal status of women combatants in international law is ambiguous but nowhere it is prohibited. Women can be spies and saboteurs in international law, and they can participate as fighters in NIAC¹¹⁷.

114. See note 101.

¹¹⁵ Tim Bakken, "Woman Soldier's Right to Combat: Equal Protection in Military" *William & Mary Law School Scholarship Repository* 20, no. 2 (February 2014), <https://scholarship.law.wm.edu/wmjowl/vol20/iss2/2>

111. Amy Barrow, "UN Security Council Resolutions 1325 and 1820: Constructing gender in armed conflict and IHL" *IRRC*, 92(877), 221-234.

117. *ibid*

There are no limitations on participation of women as combatants in non-international armed conflicts except for those imposed by domestic legal regimes. However, it has been argued that such limitations may not be applicable to women who are members or supporters of organized armed groups.¹¹⁸

3.2.1 Female Combatants; GCs and its APs (I & II)

Women's participation in armed conflicts has received increasing attention in recent years. However, there is no universal agreement on legal status of female combatants. IHRL provides protection for women who participate in hostilities and may also provide additional forms of protection under IHL. The important role of women in armed conflict has been recognized by ICRC which has called for greater attention to be paid to needs of women detainees during conflict situations.¹¹⁹

The GCs and AP (I and II) are the primary international instruments which define the legal status of female combatants. Article 3¹²⁰ of these treaties relate to NIACs, while its Protocols relates to 'Protocol Additional to Geneva Conventions'.

International humanitarian law does not prohibit women from being combatants in NIACs. However, it does say that there must be no discrimination between men and women regarding access to all types of weapons or equipment used by either side during NIACs so that everyone has equal opportunity for participation¹²¹.

118. See note 46.

119. See note 5.

120. Geneva Convention (III) relative to the Treatment of Prisoners of War, Aug. 12, 1949, art. 3.

114. Laura Sjoberg, "Women Fighters and 'Beautiful Soul' Narrative" *IRRC* 877 (March 2010): 53–68.

The GCs and AP (I & II) include certain provisions that are relevant to women by virtue of their sex. Common Article 3¹²² of GCs applies in NIACs and IACs. Its 2 paragraphs also apply to women combatants without any discrimination as mentioned in article. In addition to fundamental protection under Common Article, 3 of GCs, which applies to all persons not or no longer taking part in hostilities, women who take up arms during an armed conflict may also benefit from special rules relating to war prisoners mentioned in articles 4¹²³ and 13¹²⁴ of Third GC and Article 3 common to all four Conventions.

According to 3rd GC, women must always be treated favorably and with same consideration as men regardless of their sex.¹²⁵ Article 16¹²⁶ also demands for equality of treatment without any distinction.

Additional Protocol I¹²⁷, adopted in 1977, deals with international armed conflicts. This protocol emphasized the role of women as combatants. Its article 43(2) provides the legal definition of combatants which is also applicable on females as combatants. In fact, Article 43 to 47 of API covers different status of persons taking part in hostilities and these are applicable to women taking part in hostilities without any discrimination.

The Additional Protocol II¹²⁸, which was adopted in 1977, is a legal document that addresses NIAC. It is considered a key component of GCs and aims to ensure that women

122. Ibid.

123. Ibid, art. 14.

124. Ibid, art. 13.

125. Ibid Article 14.

126. Ibid Article 16.

127. Relating to the Protection of Victims of IAC (AP-I).

128. Relating to the Protection of Victims of NIAC (AP-II).

have equal rights and opportunities to participate in all aspects of military operations during NIAC. This includes the ability to serve in combatant roles such as infantry, artillery, engineering, and medical personnel, as well as other roles in the military. The purpose of this protocol is to promote gender equality and to recognize the important contributions that women can make to military operations.

3.2.1.2 Status of Female Combatants as Prisoners of War

Majority of women who serve in combat roles must meet criteria mentioned in GCs for combatants. However, as female members become more numerous and increase their involvement in combat operations, they may be expected to adhere more closely than men do to the rules governing prisoners of war and civilians under occupation.

Although there are no formal provisions in GCs or AP (I & II) governing treatment of women prisoners of war, many definitions include women as being prisoners of war by virtue of their gender.

Article 4 of 3rd GC supports this stance, defining those who are hors de combat as individuals unable to participate in hostilities due to factors such as “injury, illness, captivity, or other causes.”¹²⁹ This definition excludes only those who voluntarily leave a combat area and those whose behavior is motivated by a mental disorder. In addition, it has been argued that if a woman voluntarily leaves her home in order to participate in armed conflict and dies while fighting for that cause then she may be considered a war prisoner.

129. See note 110, art. 4.

The question as to whether a woman should be considered a prisoner of war has not yet been definitively answered by international courts or tribunals because there are no precedents for such cases. The “International Criminal Tribunal for the former Yugoslavia” (herein after use as ICTY)¹³⁰ recognized that there were no provisions in IHL specifically recognizing female combatants as prisoners of war; it was argued that there would need to be some kind of differentiation between male and female prisoners because each gender has different needs during detention periods, however, it also concluded that “the prohibition against gender discrimination does not apply if it would interfere with other obligations under international human rights instruments”

In general, IHL provides that civilians are not to be targeted in armed conflict and prisoners of war (POWs) cannot be harmed.¹³¹ The rules governing the treatment of POWs are contained in 3rd GC, which states:

"Prisoners of war shall be treated with humanity and respect for inherent dignity of human person".

Combatants captured in a NIAC do not have the status of POWs, but they are nonetheless entitled to fundamental protections stated in Article 3¹³² of GC 1949 (four GC) and in Article 4 of AP-II¹³³. The provisions mention in Article 4 and 12-16¹³⁴ of 3rd GC also benefits female combatants.

130. Natalia Buchowska, “Violated or protected. Women’s Rights in Armed Conflicts after the Second World War.” *ICJ* (December 2016).

131. Article 4 of AP-II

132. Common Article 3 of Geneva Conventions 12 August 1949.

133. Article 4 of AP II

134. Article 4 and 12-16 of Geneva Conventions III, provides definition and basic rights to prisoners of war. It guarantees fundamental protections to POWs.

The treatment accorded to women in wartime has often been compared to slavery because prisoners of war have historically been held for ransom or sexually abused by their captors. During World War II, female prisoners were forced into prostitution to enrich their captors; this practice was also observed during World War I. In addition, POWs were often subject to torture or other abuse at their captors' whim.¹³⁵

3.2.2 Analysis of Relevant International Laws on Role of Female Combatants During Armed Conflicts

There are international laws regarding role of female combatants during armed conflicts. International laws have been established to regulate the role of female combatants in armed conflicts. United Nations has also made efforts concerning women combatants.

“Fourth World Conference on Women in Beijing in 1995”¹³⁶ established Platform for Action, which was determined in promoting equal participation of women in dispute resolution at decision-making levels. Internationally, there have been significant changes regarding women's involvement in armed warfare since this Beijing Conference.

“United Nations Commission on Status of Women in 1998”¹³⁷ cover topic of Women and armed conflict. The Commission recommended that “member states and international community take additional measures to quicken the execution of the strategic

135. W.P Skelton and N.K Skelton, “Women as POWs” Military medicine (U.S. National Library of Medicine), accessed December 6, 2022.

136. Sihq, “The Fourth World Conference on Women, Beijing 1995,” Soroptimist International, February 24, 2021, <https://www.soroptimistinternational.org/>.

137. “Outcomes.” UN Women – Headquarters. Commission on Status of Women. Accessed December 15, 2022. <https://www.unwomen.org/en/csw/outcomes>.

objectives of Platform in this area, including inclusion of women in peacekeeping, peacebuilding, pre- and post-conflict decision-making, and conflict prevention”.

UNSC Resolution 1325,¹³⁸ which was adopted in 2000, is one of the most important resolutions on this topic. This resolution calls for full and equal participation of women in all aspects of peace and security, including in prevention and resolution of conflicts. Additionally, it calls for protection of women and girls from gender-based violence during armed conflicts. UNSC Resolution 1325 on WPS has also addressed the critical role played by women in conflict resolution and peacekeeping activities. UN Resolution 1889 (2009) strengthen the monitoring and implementation of this resolution.

UNSC Resolution 1820¹³⁹ and **UNSC Resolution 1888**¹⁴⁰ call for states to investigate alleged violations of humanitarian law by non-state actors; they also establish an individual responsibility principle that requires those who commit these crimes to pay reparations for their actions. In light of these two resolutions, it is possible for female combatants' rights under IHRL or IHL to be violated if:

- They commit war crimes while acting as part-time military personnel; or
- They participate in offensive operations against noncombatants or civilians on behalf of another party during wartime or peacetime without prior consent from them.

138. UN Security Council, Resolution 1325, S/RES/1325 (2000), <https://peacemaker.un.org/node/105m> Accessed on 15 December 2022. United Nations Peacemakers.

139. Swedish Armed Forces. “UN Security Council Resolutions on Women, Peace and Security | Summary and Extracts for Military.” Accessed December 19, 2022. <https://www.forsvarsmakten.se/>.

140. Ibid.

International Criminal Court (ICC),¹⁴¹ which was established in 2002, has laws that address role of female combatants in armed conflicts. ICC's Rome Statute states that any person who commits a war crime can be held accountable for their actions, regardless of their gender. This includes individuals who commit acts of violence against women and girls during IAC. The ICC's jurisdiction extends to cases involving serious violations of IHL and IHRL, and it is empowered to hold individuals accountable for crimes committed during armed conflicts. The inclusion of provisions related to violence against women in Rome Statute reflects recognition of unique harms and vulnerabilities that women and girls face during IAC, and the importance of ensuring accountability for these crimes.

3.2.3 National Laws for Female Combatants

In addition to international laws, many countries have their own laws that regulate the role of female combatants in armed conflicts. E.g., in United States, the Military Selective Service Act of 1967 states that women are not required to register for the draft. Additionally, US Department of Defense has issued regulations that prohibit women from serving in combat roles.¹⁴²

In other countries, such as Canada and Australia, women are allowed to serve in combat roles, but they must meet certain criteria. E.g., in Canada, women must be at least 18 years old and have completed basic training before they can serve in combat roles. In Australia,

141. Rome Statute of ICC 2002

142. Laura L Miller, et al., "What Are Restrictions on Service of Active-Component Military Women?" May 21, 2012. Retrieved from: <https://www.rand.org>.

women must be at least 19 years old and have completed basic training before they can serve in combat roles¹⁴³.

There are no limitations on women's participation as combatants in NIAC, except for those imposed by domestic legal regimes. Women who participate in hostilities could be prosecuted for violation of domestic laws governing participation in hostilities. IHRL is relevant where charges are brought against female combatants. IHRL¹⁴⁴ provides protection for women who participate in hostilities and may also provide additional forms of protection under IHL.

The GCs and AP (I & II) do not prohibit women from fighting on the battlefield. However, there are some restrictions imposed by domestic legal regimes which may affect their participation in combat operations. These include:

- Those who have been convicted of crimes against humanity or war crimes cannot be considered part of a unit unless they receive a pardon from the state that issued their sentence.
- Women who have been convicted for war crimes should be subject to an amnesty if they are willing to renounce their past activities.
- States parties must ensure that all persons detained as POWs are treated humanely and protected under international law including humane conditions during captivity.¹⁴⁵

137. Hugh Smith, "Women in Australian Defence Force: In Line for Front Line?" *The Australian Quarterly*, 1990, 62(2)125-144.

144. "Definitions and Classifications," Icelandic Human Rights Centre, accessed December 15, 2022, <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/part-i-the-concept-of-human-rights/definitions-and-classifications>.

145. Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, art. 13.

It is important to remember that there is no universal rule for the status of female combatants. While some countries treat women as prisoners of war (POWs), others do not. Some nations have legislation that prohibits women from taking up arms in armed conflict, while others do not. The status of female combatants varies from country to country and depends on their role in an armed conflict and their military, social or governmental position¹⁴⁶.

3.3 Legal Status of Female Combatants in Islamic Law of War

Legal status of female combatants in Islamic law of war is a complex and often misunderstood topic with a long history. By examining the current legal status and historical context of this issue, it is possible to gain a clearer understanding. It is interesting to know that some western scholars portray that classical Islamic Law is negative about recruitment of female combatants¹⁴⁷. It serves a purpose for them because various terrorist organizations recruited female combatant which turned lethal for (their) enemy. Western scholars have to deal with them at the level of scholarship.

Currently, the legal status of female combatants in Islamic law of war is somewhat uncertain. Some countries still forbid women from participating in combat operations, (like Pakistan Navy) while others, such as Turkey and Pakistan, allow women in combat roles.

¹⁴⁶ Shover, Michele, J. "Roles and Images of Women in World War I Propaganda." *Politics & Society*, 1975, 5(4), 469–486.

¹⁴⁷ David Cook, "Women Fighting in Jihad?" *Studies in Conflict & Terrorism*, 28 (2005):375–384.

Additionally, there are some countries that have taken a more progressive approach to the issue, i.e., Saudi Arabia, permitting women in combat roles.

3.3.1 Analysis of relevant Quranic Verses, Sunnah Mutwatira and Islamic Teachings

As Islamic law forbids the killing of anybody; similarly, it does not elevate everyone to the legal position of a combatant. Instead, as we have seen in prior chapters, there are certain parameters for designation as a combatant. Furthermore, the entire mechanism is governed by a set of rules. Therefore, in order for a female combatant to participate in the Jihad (war) and becoming a legal combatant they must need to fulfill certain condition. Research of the Islamic principles shows that designating someone as a combatant and so considering them to be a legitimate target requires their direct participation in hostilities. Anyone who actively engages in hostile activity, even if unintentionally, will be regarded as a combatant and so will be a legitimate target.

The Holy Quran does not explicitly mention women as combatants, but it also does not prohibit the participation of women in war. This can be seen from verses such as:

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

"Fight in the way of Allah with those who fight you, do not go beyond. Allah dislikes transgressors".¹⁴⁸

148. The Holy Quran 2:190

Allah Almighty has addressed Muslims not only men to fight in case of need or defense. The only limitation mentioned in this Ayah is not to go beyond rules set by Allah Almighty.

The research of Sunnah Mutwatira, Islamic history, and teaching shows that it is not obligatory for women to participate in war as this can be deduce from saying of Holy Prophets (SAW), when Hazrat Aisha (R.A) asked her about participation in Jihad. Hazrat Aisha (R.A) narrates that “I said: O Messenger of Allah! Is Jihad also obligatory on women? The Prophet (PBUH) said: Yes, Jihad without fighting, which is Hajj.”¹⁴⁹ In another chain of narration it is stated as “Best Jihad for you is Hajj Mabrur”.¹⁵⁰

But this does not mean that they should never participate in war, or it is not permissible for them to participate in war because of hijab issues. Because there are examples in Islamic history, especially in era of Holy Prophet (SAW), of women fighting bravely like male combatants. Some important instances proving the participation of women in combats includes the examples of Hazrat Umm Salama (RA)¹⁵¹, Hazrat Safiyyah (R.A),¹⁵² and Hazrat Umm Amara (R.A)¹⁵³. In fact the first martyr of Islam was a lady named Hazrat Summayya (R.A). She (R.A) was among the seven people of Makkah who accepted Islam at the very beginning. And as far as hijab is concern, there are examples where women participated in war after revelation of Ahkam of Hijab. Narrated Aisha (R.A): “Whenever the Prophet (SAW) intended to proceed on a journey, he (SAW) used to draw lots amongst his wives and would take then one upon whom the lot fell; Once

149. Bulugh al-Maram 11/3, Sahih al-Bukhari 2875

150. Sahih al-Bukhari 1520

151. Sahih Muslim 4680

152. Muhammad Hamidullah, *The Muslim Conduct of State*, (1992), 246, doi:10.1604/9781567443400.

153. *Sirat Ibn Ishaq*, Urdu translation, page 480

before setting out for Jihad, he drew lots amongst us and lot came to me; so, I went with the Prophet (SAW); and that happened after the revelation of the verse of Hijab”.¹⁵⁴

As stated, earlier there are certain conditions for fighters to fulfill in order to gain legal status of combatants. Once these prerequisites fulfill, they gain status of lawful combatants. Likewise, in Islamic law, there are some specific conditions for women who participate in war to for the designation of lawful combatant.

The first condition is that there must be a **legitimate cause for fighting**. The reason for this is because it is not allowed for Muslims to wage war on any other religious group or nation unless there is a just cause ¹⁵⁵(e.g., if one side has been unjustly treated). If there is no just cause for fighting, then it would be considered an act of aggression by Muslims against other people who are not Muslim. During war perfidy, mutilation and genocide is also prohibited under Islamic law.¹⁵⁶ This is applicable on all men and women combatants.

Some jurists are of opinion that women taking part in Jihad should be of **older age** whether they take part as volunteer or warrior. But there are instances of unmarried and young girls taking part in jihad in era of Holy Prophet (SAW).¹⁵⁷

Scholars argue that after the revelation of **Ahkam of Hijab** it is not permissible for woman to fight or participate in war. But we see that wives of Holy Prophet (SAW) used to go on Jihad with him (saw) even after revelation of Ahkam of hijab.¹⁵⁸ Nonetheless, it

154. Sahih al-Bukhari 2879

¹⁵⁵ The Holy Quran 2:190

156. Rafeeq Shinwari, *General Principles of Islamic Law Regarding the Combatant Status: An Analysis in the Light of Sharh Kitab Al Siyar Al Kabir* (Islamabad, Pakistan:FSL-IIUI, Islamabad, 2018), 90-95.

157. See note 145, p.144; Ibn e Hisham, 768; Sh. Muhammad Ashraf, 1986, 244.

158. Sahih al-Bukhari 2879

is obligatory on Muslim women, that when she participate in war she must be in proper dress and covering her body.

The second thing that needs to happen in order for a female fighter to participate in battle is that she needs **permission** from her father or husband/father-in-law. The research of Sunnah Mutawatira shows that women used to take permission from Holy Prophet (SAW) before going on to Jihad.¹⁵⁹ Shaibani also permits young women to join in military expeditions if their close relatives had no objections.¹⁶⁰

It must be noted that there are no explicit provisions in Islamic law that allow women to fight in armed conflicts **against their will or under compulsion** (under duress). Furthermore, according to Islamic law, no one should be forced into participating in any type of war. A woman may legally become part of war only if she has free will and consent of her guardian or near relatives.¹⁶¹

3.3.1.2 Killing of Female Warrior in Islamic Law

It is not permissible in Islamic law to kill any child or women during war. But as discussed earlier anyone who actively engages in hostile activity, even if unintentionally, will be regarded as a combatant and so will be a legitimate target. Similarly, any women taking active part in war as combatant will be a lawful target and her killing will be permissible. During the Hunayn battle, a woman was found dead. Her murder was disapproved by the Holy Prophet (SAW), he (SAW) said, "Why was she killed when she was not

159. Sahih al-Bukhari 2875, Sunan Abi Dawud 2729

160. Sarakhshi, *Sharah Alsayr ul Kabir*, 206.

161. Ibid

participating”¹⁶². According to Ibne Hajar, “If she had taken part in hostile operations, her murder might have been justified”¹⁶³. Imam Nawawi uses more formal and elaborative wording, saying: "According to jurists, if women and children do not engage in hostile behavior, they cannot be murdered. Most scholars are of opinion that they might be killed if they participate.”¹⁶⁴

3.3.1.3 Status as POWs

Female POWs are granted a number of privileges under Islamic law. Not only treatment of female prisoners of war was humane during time of Holy Prophet (PBUH), but it was also so during the reign of the righteous Caliphs. According to the circumstances, the Islamic legal system treats captives of war in one of four ways: by killing, enslaving, freeing, or demanding a ransom¹⁶⁵. Women and children cannot be executed as war prisoners, regardless of whether they are from people who follow Christianity or another faith. According to legal scholar Imam Abu Hanifa, if women and children participated in combat, then during the war, they may be slain. However, if they were captured after the war, they could not be murdered. Killing women and children on the battlefield is only acceptable if they are actively fighting and pose a serious threat to Islamic forces. Women and children are no longer in such situation after having been war prisoners.¹⁶⁶

162. Sahih al Bukhari 3014,3015; Sahih Muslim 1744a

163. Ibne Hajar, *Fath-al-Bari Fi Sharh-al-Bukhari Vol. 04*. (Lahore, Pakistan: Al-Maktabah Al-Salafiyyah, n.d). Explanation of Hadith 3012.

164. Abu Zakarriya Yahya Ibne Sharaf al-Nawawi, *Sharah Sahih Muslim*, (Cairo: Matba Mahmud Taufiq, n.d.), 12:48-49.

161.M. Munir, “Debates on Rights of POWs in Islamic Law” *Islamic Studies*, 2010, 49(4)463-492.

166. See note 20.

3.4 Conclusion

Gender equality and the engagement of female combatants on the battlefield is a topic that has attracted attention. The absence of specific provisions in international law concerning women combatants is evident. In fact, there are no binding rules on this issue under international law; however, some states have made their own provisions for this matter. The role of women in IAC is a contentious issue. The UNSC has addressed this issue, but legal regulation of participation of women as combatant in NIAC still remains unclear. The issue of women's involvement in armed conflicts in Islamic law has been subject of debate for many years and is a complex and controversial topic. There is no straightforward answer to the question of whether women are allowed to participate in IAC as combatants, civilians, or POWs in Islamic law. Some scholars argue that women should not be allowed to fight in wars, while others believe that they should have the same rights and opportunities as men. Ultimately, it is up to each individual country to determine whether to allow female combatants in their military forces. However, it is important to carefully consider both potential benefits and risks of allowing women to fight in wars before making a decision.

COMPARISON, CONCLUSION & RECOMMENDATIONS

ANALYSIS AND COMPARISON

This chapter is based on analysis of available literature (data) in language of dissertation. It presents results of comparison of International Law and Islamic Law regarding legal status, role, and rights of female combatants. Furthermore, it deals with details regarding difference between International Law and Islamic Law. The phenomenon of female combatants in its various forms, legal and illegal, has numerous dimensions in contemporary world. The emergence of terrorist organizations poses serious threat to nation states by recruiting female combatants: though, irrelevant with the study, nevertheless, its discussion is important. This chapter also highlight this aspect of female combatants.

Armed conflict creates chaos in societies and immense humanitarian suffering. In history of mankind there have been laws to regulates the wars. These laws were created for particular state, tribe or society. People were bound to follow them. No matter which state or society laws they were, their main objective was always to protect its followers from sufferings or at least minimize the harm caused due to conflict. With the development of civilization, more regulated states formed. For better relations and benefits they made treaties between them which today we know as ‘International Law’. Main purpose of this law is to govern relations between states. Branch of international law which governs laws of war is called IHL. On the other hand, citizens of states also had their own laws based on customary practices or religion. Islamic Law is also such law that is binding on Muslims. Like every other department of life, it also regulates war affairs with other states and within states. This branch of Islamic law is known as Islamic Law of War (ILOW) commonly.

ILOW or Shariah law, is a complex set of rules and requirements that govern how Muslims can engage in warfare. It is based on two sources: Holy Quran and Sunnah Mutwatira (words and deeds of Holy Prophet PBUH). The Holy Quran prohibits fighting non-Muslims unless they attack Muslims first. Islamic law of war also requires that Muslims must take care to protect women and children during times of war, but it does not prohibit using them as combatants if they are able to fight willingly.

In Islamic Law, there are certain conditions for fighters to fulfill in order to gain legal status of combatant, once these prerequisites fulfill, they gain status of lawful combatants. Likewise, there are some specific conditions for women who participate in war to for the designation of lawful combatant. Islam has a clear set of rules for how to treat female combatants, what are their rights and duties, and these rules are more comprehensive than International Humanitarian Law. Islamic law takes into consideration the fact that women are not just people, but also valuable members of society. Islam has kept the status, modesty, and sanctity of women at high rank. The honor of women has significance place in Islam, rights of women are considered top priority and respect of women is golden principle of Islamic teachings. In the era of Holy Prophet (SAW), the women used to cooperate and help the Mujahidin and they also directly participate in wars as warriors with the permission of Holy Prophet (SAW).

According to Islamic teachings and laws, the rights and protections afforded to female combatants are clearly defined and strictly enforced. These protections apply to both Muslim and non-Muslim female combatants and include the prohibition on targeting or causing harm to female combatants unless they are actively participating in the fighting as warriors. It is also prohibited to forcibly recruit women into the military. In addition,

Islamic law requires female combatants to observe hijab, which involves covering the body and face with a veil, in order to maintain modesty. The dress code for female combatants is also different from that of male combatants. Overall, these rules and practices are intended to ensure the safety and well-being of female combatants and to respect their modesty during times of armed conflict.

In Islamic law, it is not permissible to capture women and children as POWs. There is strict prohibition of any kind of violence against women including rape and other form of abuse.

In contrast, stance of IHL on role of female combatants is not explicit. No clear definition of female combatants is mentioned in GCs and its AP (I & II), which are core documents regulating warfare. IHL focuses more on protection of non-combatants. When it comes to female combatants, the rights and protection given to them only “due to their sex”. There is no specific mention of provision for female combatants as they are mention in Islamic Law. There are several treaties related to war crimes and criminal acts committed during wartime (such as genocide), but there is no specific treaty dealing with protecting female combatants or providing them with legal support in times of conflict.

Although some work has been done in international law in form of resolutions, i.e., UNSC Resolution 1325. But these treaties and resolutions only bind their signatory parties, that too on their discretion. They are not strictly binding as Islamic Law is binding.

Islamic law of war contains specific provisions for female combatants, which are not found in IHL. The Islamic teaching and Sunnah of Prophet Muhammad (SAW) also

provide guidelines for protection of female warriors, as well as their rights as human beings.

Islamic Law of war addresses protection of female combatants in a comprehensive way that IHL does not. In Islamic teachings, it is believed that women should be protected from harm during wartime. This is not case for IHL, which does not address female combatants specifically.

CONCLUSION

Female combatants are part of reality in war scenarios around the world but there is still no clear legal protection for them. Female combatants have been fighting in conflicts throughout history; however, their role has never been explicitly defined within the context of international law because of their primary role as non-combatant caregivers and support staff. The international laws are focused more on protection measures available for females during wars instead of addressing their participation in armed conflicts or peace keep operations as combatants. This is because usually as seen women do not fight wars as soldiers but provide critical support to male combatants in various capacities during wars. The GCs and AP-I & II include certain provisions that are relevant to women by virtue of their sex. IHRL, and IHL, must protect female combatants against discrimination for not being men during armed conflicts. The role of women in armed conflicts is rapidly evolving, and there remains a need to ensure that female combatants are integrated into international laws governing armed conflict. There are several arguments in favor of allowing female combatants in Islamic law. First, it is argued that women should have the same rights and opportunities as men, and that denying them the right to fight in wars is a

form of gender discrimination. Additionally, some Islamic scholars point out that there are numerous examples in Islamic history of female warriors who fought alongside men. For example, during the Battle of Uhud Hazrat Umm Amara (R.A), was among the fighters. Furthermore, it is argued that allowing women to fight in wars would be beneficial for military operations. Studies have shown that female soldiers are often more successful in combat situations than their male counterparts due to their greater physical endurance and ability to remain calm under pressure. Additionally, female combatants can provide valuable insight into local cultures and customs, which can be useful for military operations. Despite the arguments in favor of female combatants, there are also several arguments against them. Some Islamic scholars argue that allowing women to fight in wars is contrary to Islamic teachings, which state that men should protect women and not put them in harm's way. Additionally, some argue that allowing women to fight in wars could lead to a breakdown of traditional gender roles, which could have a negative effect on society. Moreover, there are concerns about the physical and psychological effects of combat on female soldiers. Studies have shown that female soldiers are more likely to suffer from post-traumatic stress disorder than their male counterparts due to their greater sensitivity to violence and trauma. Additionally, there are concerns about the safety of female combatants, as they may be more vulnerable to attack or capture than male soldiers.

Female combatants must be defined under any law or regulation governing their participation in armed conflicts. The importance of defining female combatants is evident. The need for a definition that is consistent with international law, national law and interests of female combatants should be considered when determining whether or not they may participate in armed conflicts.

RECOMMENDATIONS

Few recommendations are suggested to improve legal status of female combatants in international law and IHL.

- The most important change needed in international law is to provide a proper definition of female combatants, including women who are part of irregular armies in any capacity. a clear definition of female combatants is not only necessary but can be achieved by a three-pronged approach, namely through drafting new national law provisions, international conventions, and Security Council resolutions.
- Another policy option is to make extra efforts to track and identify women in armies so that they do not remain underreported and thus excluded from post-conflict assistance programs. It is also important to examine whether and how demobilization activities and facilities could be made more gender sensitive and more responsive to local needs and circumstances.
- It is also needed to better address root causes of violence against women during war and in prisons. One way in which this could be achieved would be through training programs within peace-keeping missions; another way would be through comprehensive legislation which prescribes harsher penalties for perpetrators of such crimes when committed against women under their care.
- Finally, what needs to be done in order to fill existing gaps in legal protection for women combatants during war and as POWs is that international community needs to address the issue of female combatants and incorporate them into GCs and AP-I

and II. In addition, a convention should be adopted that addresses this issue in more detail.

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