

MODERN WORLD AND THE SOCIAL RIGHTS OF REFUGEES, ISLAMIC AND INTERNATIONAL LAW

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Abstract:

The modern world now is a world of conflict and forced migrants. Asylum and “refuge-seeking” are two important themes in human history. Islamic Law and teachings relating to refugees and forced displacement are known as Hijrah law. It is quite comprehensive from refugee law of the modern world. It surely gives more protection to asylum-seekers and refugees (Mustaminūn). This article addresses the rules of the modern world in comperative with Islamic laws about refugees. If Islamic laws are taken into consideration, it can be a great contribution to the protection of the forcibly displaced people. It might also reduce the numerous social problems which globally the refugees are facing now days.

Keywords: Islam, International law, Refugee, Social Rights

1. Introduction

Human Rights are universal, and these civil, political, economic, social and cultural rights belong to all the human beings, including refugees and internally displaced people taking into consideration their particularly weak status. Asylum seekers and refugees are entitled to all the rights and fundamental freedoms that are spelled out in all the modern human rights instruments. These include the right to life, protection from torture and ill-treatment, the right to take a nationality, the right of movement of freedom with all the security of the assets, the right to leave any country including one's own, and to return to one's country, and the right not to be forcibly returned. The refugee has the right to seek for the safe livelihood, own the valuables etc.

There are two main categories of law about refugees that have been discussed in this article; the International law under the authority of United

Nations Organization and Islamic law being the universal religion¹ which clearly guides for the rights of the refugees.

The UNHCR² declares that all refugees have the same basic human rights both civil and social, as any other foreigner who is a legal resident of the country. Refugees have the rights of freedom of movement, liberty of thought, and security from torture and degradation. In addition, all the refugees should have access to medical care and health support with the right to work, have business and legal livelihood. Islam being a complete code of life teaches to help poor, needy, wayfarers and the depressed communities.

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ
وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ³

Indeed charities (Zakāt, Sadaqāt) are meant for the poor and the needy, and those who are deployed to collect charities and those in whose hearts are to be reconciled, And for freeing of human lives (from slavery) and removing the burden of those who are to pay the debt and in the cause of Allah and the wayfarers (is true). This (all) has been prescribed by Allah and Allah is All-Knowing, Most Wise.

Refugees are the quintessential example of what the Qurān defines as wayfarers. Both Islam and International Law give them the rights and protection to live in the society. Some of the social rights are given as below.

2. The Safety of the Refugee

Generally, under the human rights tools, rights are granted to all living in a state, and not only to citizens of any States parties. It's a duty of any state to ensure all economic, cultural, and social rights including the rights to social security and health to all individuals living within their territories, providing specific protection for deprived and weak individuals and groups.

The refugees and asylum seekers are a special category of non-nationals and they require special protective measures because of their vulnerability.

¹ Other than Islam the heavenly religions like Judaism and Christianity can't provide such comprehensive commands to meet with the requirements in this issue. That's why I have chosen Islamic law as a base for this comparative study.

² The *United Nations High Commissioner for Refugees* (Article 1/A-2 of the 1951 Convention)

³ Al-Quran, al-Toubah 9:60

They should enjoy all rights on the same footing as citizens of any state concerned. Additionally, State officials with few exception, must honor the refugees the same treatment as is given to nationals in regard to social security guarantees.⁴

The safety and the protection of the refugee in the host country are of course of fundamental importance. Protection from any harm is the foremost right that should be guaranteed to him since in most of the cases he has fled the threat and harm. As the scholars point out, however, ‘even though physical security is clearly fundamental to any claim of refugee protection, the Refugee Convention is silent on this issue’. The drafters failed to reach an agreement on the wording and the suggestion was rejected because it was considered too ambitious.⁵ Still, the Convention as a whole is based on providing safety to refugees. Furthermore, the refugees could depend on the other Articles in the Convention to claim protection.

For example, ‘those who are threatened by fight and war may appeal the defenses of the Geneva Conventions on the Law of Armed Conflict detailed in particular Common Article 3.’⁶

In this case the Islamic tradition, confirms the safety of the refugee and places specific responsibility on the Islamic state to guarantee the safety of the *Mustamin*, even after the cancellation of his *Refuge*, according to the Quranic verse.

وَإِنْ أَحَدٌ مِنَ الْمُشْرِكِينَ اسْتَجَارَكَ فَأَجِرْهُ حَتَّى يَسْمَعَ كَلَامَ اللَّهِ ثُمَّ أَبْلِغْهُ مَأْمَنَهُ ذَلِكَ بِأَنَّهُمْ قَوْمٌ لَا يَعْلَمُونَ⁷

And if any of the idolaters (non-believer) seeks asylum with you, provide him the protection until he listens to the Words (message) of Allah. Then escort him to his safe place. This is because these people do not have the knowledge (of the Truth).

Many scholars have confirmed the *Mustamin*’s right of protection, welfare and good care. ‘The *Mustamin* is not to be harmed, on any conflicting issue, the Muslims should protect him in his person, his money and his honour as long as he stays in an Islamic state.’⁸ Furthermore, while

⁴ Convention Relating to the Status of Refugees, (Article 24).

<https://www.unhcr.org/3b66c2aa10.html>

⁵ Hathaway, J. *The Rights of Refugees under International Law*. Cambridge: Cambridge University Press, 2005, p. 448)

⁶ Ibid , p. 449

⁷ Al-Quran, al-Toubah 9:6

⁸<https://www.altafsir.com/Tafasir.asp?tMadhNo=7&tTafsirNo=57&tSoraNo=9&tAyahNo=6&tDisplay=yes&UserProfile=0/&LanguageID=1>

talking about the rights of a Refugee Al-Shirazi says: ‘The Imam (Muslim leader) has to protect all those who live in an Islamic state, defend them against anyone who wanted to harm them as well as make arrangements freeing those who are in imprisonment by the enemy.’⁹

The *Ḥadīth*, narrated in several books with different phrasing, is clear on this point. In the account of Ibn-e-Abi Shayba, and al-Qazwini, the Prophet Muhammad ﷺ said:

‘Whoever gives Amān (Refuge) to a person and kills him, will be given the flag of treason in the hereafter.’^{10, 11}

In another narration the Prophet Muhammad ﷺ said:

*‘Whoever gives Amān and protection to a man and kills him, then I am disassociated from the killer even if the one who was killed was a disbeliever’.*¹²

The point in this *Ḥadīth*, ‘and even if the killed person is a disbeliever’, is important in this background. It proves that being a disbeliever does not reduce someone’s value or humanity. Furthermore, being a disbeliever does not give the justification for the insult or the act of killing. The significance of this *Ḥadīth* became more apparent in relation to the scholarly conversation concerning the punishment of a Muslim who kills a *Mustamin*. Ibn Qayyim al-Jawzī states clearly: ‘The *Mustamin* is protected and in the case of his killing his blood-money is guaranteed.’ However, if refugee was killed by a Muslim, in this case the scholars of Islamic jurisprudence have different opinions over the punishment for that crime.

Refuge is provided to save those who are fleeing death, oppression, disgrace and humiliation in another place. Keeping the refugee alive and safe is an obligation from Allah on Muslims through verse 9:6, as we have discussed before.

Furthermore, the Holy Quran does not differentiate between humans when it comes to killing, mainly the Quranic verse

مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا¹³

Whoever unjustly killed a person, except as a punishment for murder or for spreading

⁹ al-Shīrāzī, I., n.d. *Al-Muhadhdhab*. Beirut: Dār al-Fikr. 1982, vol. 1, p. 239

¹⁰ Ibn Abi Shayba, A. *Muṣannaf Ibn Abī Shayba*. Riyadh: Maktabat al-Rāshīd, (ed K. al-ʿūt). 1988, vol. 2, p. 356)

¹¹ al-Qazwīnī (n.d., vol. 2, p. 896)

¹² Al-Tabrizi, M., *Mishkāt al-Maṣābīḥ* (3rd edn). Beirut: al-Maktab al-Islāmī (ed M. al-Albānī, 1985, vol. 2, p. 1146

¹³ Al-Quran: 5:32

disorder in the land (i.e. punishment for bloodshed and robbery etc.), it would be as if he killed all the humanity....

So, a soul is a soul whether it is the soul of a Muslim, *Mustamin* or a *Zimmī*. It should not be killed without any rightful reason. One of these rightful reasons, according to the *Ḥadīth*, was ‘a soul for soul’, again, without any differentiation between the souls.¹⁴

Commenting on this verse, Imam Sitūtī and others say that it makes no difference whether the killed person was a Muslim or *Mustamin* because both are the humans. This view is perfectly in tune with the message of the mercy in Islam and the main aims of granting refuge. This message, welcomes the refugee and obliges the Muslim to take a good care of him. Lessening the value of their lives does not fit with this message at all.

3. Non-discrimination

In human social behavior, discrimination is prejudiced treatment or consideration of, or making a distinction towards, a being based on the group, class, or category to which they are perceived to belong. These include age, caste, race and ethnicity, disability, family status, gender identity, genetic characteristics, gender expression, generation, nationality, color, religion, as well as other categories. Discrimination faced by the individuals, or some special groups. "in a way that is worse than the way people are usually treated"¹⁵ Specially the refugees face this discrimination on a wide level which made the issue of non-discrimination in dealing with refugees is vital. The representatives and experts who framed the “Geneva Convention” gave it primacy, making it the first right to be granted to the refugee in any country. It states:

‘The Contracting/ the host States shall apply the requirements of this Convention to refugees without any discrimination as to race, religion or country of origin.’¹⁶

In the Islamic tradition there is no exact text which specifies this right with equal clarity. However, in Islam there are general principles which help the same purpose of this Article. The issue of race was addressed by the Qurān in different verses. It is clear that the Qurān and Hadith together opposed those Arab pre-Islamic customs which discriminated against people on the basis of race. First, the Qurān states all

¹⁴ Ibn Kathir, I., *Tafsīr Ibn Kathīr*. Beirut: Dār al-Fikr, 1980, vol. 1, p. 535

¹⁵ "Discrimination, definition". *Cambridge Dictionaries Online*. Cambridge University.

¹⁶ Geneva Convention ,Article 3

human beings are equal by the fact that all originate from the same source. The Qurānic verse states:

وَهُوَ الَّذِي خَلَقَ مِنَ الْمَاءِ بَشَرًا فَجَعَلَهُ نَسَبًا وَصِهْرًا وَكَانَ رَبُّكَ قَدِيرًا¹⁷

And He is the One Who created man from water (a sperm drop resembling), and made for him (the kinship by) lineage and in-laws. And your Lord is All-Powerful.

Al-San'āni explains the verse: 'It is inferred from this verse the equality between the sons of Adam.'¹⁸ In another verse the Qurān repeats this fact and makes it clear that all peoples were created from one soul:

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ¹⁹

O mankind! Fear your lord, who has created you out of one living entity...

The Prophet affirmed this meaning:

الناس كلهم بنوا آدم و آدم خلق من التراب^{20, 21}

'All people are the sons of Ādam and Ādam was created from soil...'

Furthermore, Allah says that He has honoured all the humans, and made them superior to many of His creatures, gave them the control and authority over many creatures. Quran says:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْوَرْدِ وَالْبَحْرِ

And We have indeed gave honour to the children of Adam and provided them with sustenance over the land and in the sea...²²

Yet, the Islamic principles establish a standard for superiority and dominance among humans, the standard for which is piousness and good conduct.

إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ²³

"... Surely the most honorable among you in the sight of Allah is he who fears Allah most. Certainly Allah is All-Knowing, All-Aware".

¹⁷ Al-Qura'n: 25:54

¹⁸ Al-Sanani, Abdul-Razeq Ibn Hamam, 1959. *Subul al-Salām* (4th edn). Beirut: Dār Iḥyā al-Turāth (ed M. al-Khūfī) (1959, vol. 3, p. 128)

¹⁹ Al-Qura'n :4:1

²⁰ Al-Suyuti, Jalauldin, *Al-Durr al-Manthūr*. Beirut: Dār al-Fikr. 1993, vol. 7, p. 580

²¹ Al-Tirmidhī, M., n.d, *Sunan al-Tirmidhī*. Beirut: Dār Iḥyā al-Turāth (eds A.Shākir & others vol. 5, p. 734

²² Al-Quran: 17:70

²³ Al-Quran:49:13

In this verse Allah directs His speech to all humans, Muslims and non-Muslims, regardless of their colour, telling them: that the noblest among them in the sight of God is the one who is most deeply conscious of Him. That shows the nobleness mentioned here and says: ‘It is the praised actions.’²⁴ This concept was repeated and rephrased by the Prophet (SAW) in many of his Ḥadith, like that reported on the authority of Abu Hurayra (RA)

إِنَّ اللَّهَ لَا يَنْظُرُ إِلَى صَوْرِكُمْ، وَلَا إِلَى أَمْوَالِكُمْ، وَلَكِنْ يَنْظُرُ إِلَى قُلُوبِكُمْ وَأَعْمَالِكُمْ²⁵

‘Surely, Allah does not look at your appearances and wealth, but He looks at your hearts /intentions and deeds.

The Prophet emphasized the significance of this principle, in his last pilgrimage:

أَيُّهَا النَّاسُ إِنَّ رَبَّكُمْ وَاحِدٌ وَإِنْ أَبَاكُمْ وَاحِدٌ كُلُّكُمْ لَأَدَمُ ، وَلَيْسَ لِعَرَبِيٍّ عَلَى عَجْمِي فَضْلٌ إِلَّا بِالتَّقْوَى²⁶

‘O people, verily your God is one. Verily, your father is one. You all are the sons of Adam. Verily, no favour for the Arab over the non-Arab, except by piety’

This piety, however, is not just the empty words. On the contrary, it should be the practical and people should feel its good result. The Prophet was asked about the best among Muslim and he said:

مَنْ سَلِمَ الْمُسْلِمُونَ مِنْ لِسَانِهِ وَيَدِهِ²⁷

‘The best Muslim is the one who people are safe from his hand and tongue’

There are many Ḥadith which give the same kind of instructions, the concept that the best among people is the one who is a source of benefit for others and to whom people entrust their blood and money. So, it is the practice and the action that makes some people shine over others. To make this principle a habit in Muslims it required more than a single Ḥadith.

It was a year’s long process that was particularly challenging for those Arabs who could recall the ignorance (jahiliyya) and its customs.

²⁴ Al-Aḥfāhānī, H., n.d. *Al-Mufradāt fī Gharīb al-Qurʾān*. Beirut: Dār al-Marifa (ed.M. Kīlānī). (n.d., vol. 1, p. 429)

²⁵ Muslim (n.d., vol. 4, p. 1987) Ibn Hibbān (1993, vol. 2, p. 119), Ibn Rāhawayh (1991, vol. 1, p. 369) and Ibn Hanbal (n.d., vol. 2, p. 284).

²⁶ Al-Suyutī, 1993, vol. 7, p. 579.

²⁷ Ibn Hibbān, M. 1993. *Sahih ibn Hibban* (2nd edn). Beirut: Muassasat al-Risāla (ed S.Arnaut). 1993, vol. 2, p. 76, Muslim 40 (http://www.al-mawrid.org/index.php/articles_urdu/view/Hath-Aur-Zuban-Ki-hafizat)

Arrogance in race and tribe was engrained in that society and it was not easy to surrender those second nature lifestyles.

Discrimination based on colour, tribe, and wealth was reprimanded and associated with the Jahiliyya. The individuals who made such mistakes were admonished by the Prophet Muhammad ﷺ. Abu Dharr (RA) while quarrelling a companion one day called him '*O the son of the black mother.*' When the Prophet Muhammad ﷺ heard about it he summoned him and told him: '*You are a man still with remains of the jahiliyya*'²⁸ Abu Dharr (RA) was felt sorry and asked that companion for forgiveness.

With regard to the subject of religion, Qura'nic verse 9:6 is considered the keystone in legislating the principle of refuge in the Islamic tradition and does not discriminate between refugees on the basis of colour, tribe or country of origin. The term used to label the refugee is 'one of the disbelievers' without any descriptions, specifications or limitations. So, it is general and could include all non-Muslim refugees.

Therefore, if we were to compare the Islamic teachings with the Convention on this issue we would say that the Islamic practices in principle rejects any kind of discrimination based on race or colour and consider such discrimination as a sign of ignorance and of reverting to the Time jahiliyya. The equality of humanity is one of the main principles in Islam. There is no dominance for one race over another. The slandered of superiority is excellence in doing good and acting positively, regardless of race, color and lineage. From these principles without any restriction or limitation, we can generalize for application to all the refugees. With regard to belief, the Islamic teachings afforded Muslim migrants priority over non-Muslims in the terms of the speed of integration into and membership of Muslim society. However, the special treatment of Muslim migrants did not mean the rejection or discrimination of non-Muslim.

Yet, in the modern time, the favourable treatment of Muslim migrants should be changed and there must be equality in the treatment of refugees, because all the refugees generally face a common experience of suffering and a need of protection. So the states should decide based on their security and interest. It could be said that the Islamic tradition and teachings provides the basis for modern Muslim scholars to review, rethink and detail the suitable judgement from the tradition in light of current situation and realities.

4. Personal Status

²⁸Al-Bukhārī, M., Sahih, *al-Bukhārī* (3rd edn). Beirut: Dār Ibn Kathīr (ed. Mustafā al-Baghā, 1986, vol. 1, p. 20).

It adopts a pluralist approach with respect to an individual's personal status, nowadays, it is considered as an essential element of civil rights. By personal status it is referred to the characteristics that determine an individual's personal and legal status, his identity as well as the assignments of the person in society. For example, marriage and divorce or in other words anything that intensifies the relation between the person and his/her family are considered as personal statuses and on the other hand, anything which is related to financial relations is considered as the objective status. Laws governing personal status are in general the same laws of the government; yet this law has its exceptions including public discipline, genealogy, minorities, qualification and individuals with no citizenship.

The Geneva Convention in its 12th Article tackles the personal status of the refugee and expresses:

1. The personal status of a refugee shall be governed by the law of his original country or, if he has no domicile, by the law of the country of his present residence.²⁹

2. The rights of a refugee are dependent on personal status, more particularly rights attaching to his/her marriage, shall be respected by a Contracting State as a subject to compliance, if this be necessary, with the law regulations and formalities required by the law of that State, provided that the right in question is one which would have been known by the law of that State had he not become a refugee. The definition of the term 'domicile', the contracting conditions failed to agree a definition and left it to 'the courts of the host country to decide the domicile'³⁰. Still, the adoption of this very Article is important in that it permits 'the persons to move between countries without any risk, hesitation and problems.'³¹

The discussion which took place between the officials during the coding of the Convention³² is strangely similar to the discussion that occurred between the Muslim scholars concerning the issue of *Mustamin* and his personal affairs, including his marriage status and will before entering *Dār al-Islām*. Such debates, and especially those relating to his marriage, are of relevance in the modern context, since the Geneva Convention pays special attention to this subject.

As this is well known in Islamic jurisprudence that the groom has to pay a dowry to his bride. If a Harbi married a harbiyya in non-Muslim

²⁹ Geneva Convention, Article 12

³⁰ Hathaway, 2005, p. 216

³¹ Hathaway, 2005, p. 210.

³² Hathaway, 2005, pp. 210–23

state without dowry, it would be accepted according the hanafites.³³ Clearly that is against the Islamic tradition, but it is however acceptable and Muslims do not have the right to force the *Mustamin* to do otherwise.

On the basis of this ruling the Hanafites agreed and expressed it in different wording. Imam Muḥammad and Imam Zufar³⁴ justify it on the basis that ‘they are not obliged to follow our rulings’, while Abu Hanifa authenticates this on the basis that ‘we are ordered to leave them with what they believe in and let them follow their own customs’.³⁵

The same opinion more explicitly stressed by al-Mirghinani. According his statement if a *Mustamin* got married and the dowry he paid was a dead animal, it would be accepted.³⁶ Clearly, this is a hypothetical case to validate that whatever the refugees are agree on, it will not be rejected by the Muslims authorities, nevertheless the fact that it might contradict with Islamic rulings. In this specific example it is clear that for a Muslim such a marriage is not allowed, firstly because the dowry is a condition for the precision of the marriage and secondly the dowry should not be something forbidden for the Muslims to eat or to deal with. The scholars agreed that in practical terms the personal status of the refugee before entering the Islamic state is respected, regardless of whether or not it is in consensus with Islamic rulings.

Directly this opinion was endorsed with the comment to respect the personal status in the Islamic state. ‘If the a Harbī entered to us with Aman, the divorce between him and his wife should not occur.’³⁷

In the Convention another issue of particular importance to the personal status of the refugee was not addressed but was discussed in detail by the Muslim scholars. That is the issue of religion conversion to Islam after entering the Muslim state. The Muslim scholars sited certain rulings on the refugee when he converted. Imam Shāfiʿī and Imam Abu Hanīfa and some other scholars say ‘If one of them converted while they were in non-Muslim state and then entered in Muslim state their marriage will be

³³ Al-Kāsānī, A., 1982. *Badāi al-sanai* (2nd edn) Beirut: Dār al-Kitāb al-Arabī 1982, vol. 2, p. 312

³⁴ The famous students of Imam Abu Hanīfa Al-Sīwāsī, M., n.d. *Sharḥ Fatḥ al-Qadīr* (2nd edn). Beirut: Dār al-Fikr. vol. 3, p. 386).

³⁵ al-Zaylafī (1895, vol. 2, p. 159) and Ibn Nujaym (n.d., vol. 8, p. 519).

³⁶ Al-Mirghinānī, A., n.d. *Al-Hidāya Sharḥ Bidāyat al-Mubtadī*. Diyār Baker: al-Maktaba al-Islāmiyya. vol. 1, p. 214)

³⁷ Al-Jassas, A., 1984. *Ahkaam al-Qurān*. Beirut: Dār Iha al-Turāth (ed M.Qam, āwī 1984, vol.5, p. 330)

void'.³⁸ On the other hand, al-Buhuti says that this is not necessarily the case, since Um-e-Hakim converted in Makkah while her husband Ikrima fled to Yemen and later he converted to Islam and their marriage remained valid regardless of 'the difference in the homestead and religion'.³⁹

Religion, therefore, plays a clear role in determining the personal status of the refugee in the Islamic tradition. It demonstrates in principle that the conversion to Islam by the refugee might have some impact on his personal status.

The Muslim scholars having more detailed debates another issue discussed concerning the personal status of the refugee. It's the will of the refugee while living in Islamic state. They contended over its validity and whether to implement it in the way he determined or in conformity with the Islamic rulings. Imam Abu Hanifa rules that the refugee's will should be treated like the Zammie's, 'If a Zammie donated his house to be a church for unnamed people it will be correct like the will of the Mustamin'.⁴⁰

Further he makes it clear while saying: 'This is a good deed in their belief and we Muslims are ordered to leave them with what they believe in, so for them it is allowed according to their belief.' However, Imam Muhammad and Imam Zufar disagree, they say 'This kind of will is invalid because actually it is a sin although it is a good deed in their belief. To determine a sinful act by a will is null and its implementation is affirming the sin in the society'.⁴¹

Imam Shafie in turn confirms the opinion of Imam Muhammad and Imam Zufar and gives more clear example of a will that becomes null and void: 'By his will if the person determined to use his money to buy alcohol and pigs and other stuff like that and then donate them to the needy, we will cancel his will'.⁴²

The Islamic law of inheritance is comprehensive, detailed to cover all the aspects. It says while a Refugee is allowed to determine a sin by his will according his faith according the Islamic law such condition his will is nullified.⁴³ This shows that the Islamic custom gives the Mustamin some rights which the Muslim is not permitted to, simply because the Mustamin has a different religion which should be taken care in the Islamic state.

³⁸ Ibn Qudāma, A., 1984. *Al-Mughni*. Beirut: Dār al-Fikr, 1984, vol. 7, p. 120)

³⁹ Al-Buhūtī, M., *Sharḥ Muntaha al Iradat* (2nd edn). Beirut: Ālam al-Kutub 1996, vol. 2, p. 686)

⁴⁰ Ibn Nujaym, Z., n.d. *Al-Bahr al-Ra'q* (2nd edn). Beirut: Dār al-Marifa, vol. 8, p. 519)

⁴¹ Ibid

⁴² Al-Shāfīfī, M., 1973. *Al-Um* (2nd edn) Beirut: Dār al-Marifa, 1973, vol. 4, p. 213).

⁴³ al-Kasani, 1982, vol. 7, p. 341

From this conversation we may conclude, the Islamic custom and traditions respects the personal status of the Refugee as governed by the laws of his homeland. With regard to the status of marriage specifically, non-Muslim refugees have the right to follow their beliefs and Muslims must respect that. Though the Islamic tradition offers the refugee with a great deal of freedom and liberty to conduct his personal matters, some rights in some specific cases have to be in agreement with Islamic values, otherwise they could be disallowed. This understanding imitates to the condition put by the Convention on the nature of some personal issue and its validity in the host country. Same sex marriages are clear and relevant example of this this issue as these marriages have been legalized in some countries based on the demand of their society.

While in other countries such marriages are not recognized and this subject is still considered an issue for debate and argument. In the Islamic tradition this right is considered against the nature, it is not recognized since it is forbidden by the Qura'n and the Prophetic custom. Therefore, the refugee may not have this right as it is at odds with one of the important principles of Islam regarding the family in Islamic society. This is simply an example and the scholars and authorities could execute other conditions to save the identity of the Islamic state, keep the community order and secure the Islamic national interests. To conclude, the Islamic tradition of jurisprudence delivers sufficient grounds to debate that the laws of Article 12 can be accepted for certain conditions. These conditions could be verified by the Islamic scholars according to their circumstances.

5. Welfare of the Refugee

Welfare is a type of government provision for the citizens of the society. People of any income level may have benefits of tat welfare provided, as with social security, usually it is intended to ensure that public can meet their basic human needs such as food and shelter with security. That welfare attempts to deliver a minimal level of well-being, usually either a free or a subsidized rate supply of certain goods and social services, such as education, healthcare, and professional career training.⁴⁴

To make sure one of the very important human rights of refugees the Convention dedicates different articles. Specially article 20, 21, 22, 23 and 24 of chapter 4 authorized 'Welfare' to the basic rights of the refugee that will help him benefit from public help and ensure he will not be left alone stressed to secure his basic needs in his new domicile.

⁴⁴ *The New Fontana Dictionary of Modern Thought* Third Edition (1999), Allan Bullock and Stephen Trombley Eds., p. 919.

It is stated that it is the refugee's right to be treated in the same way as a national where this system exists.⁴⁵ This is the refugee's right to have housing and the treatment should be favourable as possible and, in any event, not less satisfactory than that rendered to aliens generally in the same conditions.⁴⁶

The next article grants the refugee the right to education, access to studies of any level, the recognition of their homeland school certificates, diplomas and degrees, the concession of fees and charges and the award of scholarships if they meet with the requirements. Furthermore it obliges the host states to give the refugee the right to public relief on the same level as their own citizens have.⁴⁷ Lastly, it regulates labour laws and social security.⁴⁸

With concern to these Articles, in Islamic law we find well-established laws, the Islamic tradition oblige Muslims communally and individually to help the poor, needy and the distressed. Quran says:

وَالَّذِينَ فِي أَمْوَالِهِمْ حَقٌّ مَّعْلُومٌ لِّلْسَائِلِ وَالْمَحْرُومِ⁴⁹

And those (who are devoted to sacrifice and) in whose wealth there is a fixed share, For the one who begs and fro the one who is needy but does not beg.

The verses are the clear message to help the poor and needy regardless of their nationality, race, color and geographical background. There are numerous Ahadith in which the Prophet(SAW) urges his followers to be generous and help the deprived. Hadith says:

فَإِنَّ الْيَدَ الْعُلْيَا أَفْضَلُ مِنَ الْيَدِ السُّفْلَى⁵⁰

“...Verily the upper hand is better than the lower hand...”

This Hadith urges us to sacrifice and help the destitute, the distressed and anybody who needs help.

لَا يَرْحَمُ اللَّهُ مَنْ لَا يَرْحَمُ النَّاسَ⁵¹

“Allah does not show mercy to the one who is not merciful to other people”

⁴⁵ Geneva Convention: Article 20

⁴⁶ Ibid : Article 21

⁴⁷ Ibid : Article 22,23

⁴⁸ Ibid: Article 24

⁴⁹ Al-Quran: 70:24-25

⁵⁰ Sahih Muslim, M. Vol. 3, Book of Zakat, Hadith 2267, <https://sunnah.com/Muslim/>

⁵¹ Ṣaḥīḥ al-Bukhārī , M, 6941, Ṣaḥīḥ Muslim 2319, <https://sunnah.com/Muslim/>

The hadith in generally describes the condition for Allah's blessing, being merciful to His creation can cause His blessing for us. In another Hadith the Prophet (SAW) says:

الساعي على الأرملة والمسكين كالمجاهد في سبيل الله⁵²

"One who strives to help the widows and the poor is like the one who fights in the way of Allah."

‘Allah loves helping the afflicted, the reward of helping the poor and needy is as high as for the one who strives in the way of Allah. The Prophet (SAW) ordered his followers to do the seven in particular visit the sick, answer the sneezer etc further he said; وَنَصْرَ الْمَظْلُومِ⁵³

"...to help the poor..."

It includes to help the oppressed who ask for help or the grievously distressed. The Muslims by nature are considered sincere as Hadith says:

إِنَّمَا يَنْصُرُ اللَّهُ هَذِهِ الْأُمَّةَ بِضَعِيفَتِهَا بِدَعْوَتِهِمْ وَصَلَاتِهِمْ وَإِخْلَاصِهِمْ⁵⁴

"Rather, Allah support this Ummah because of their supplication, their Salah, and their sincerity."

That sincerity is general to everyone, regardless of the race, culture, or the background. That sincerity urges Muslims for the welfare of the people that welfare extends even to the non-Muslims who are in need.

It is obvious from the mentioned examples that these are very general principles that include not only humanity, but other creatures as well. Thus the refugee is, by default, included in these principles. Imam Suyti in his interpretation of Quranic verse 9:6 narrates that Muslims were not only ordered to protect the disbeliever(may be even a refugee) who wants to listen to the word of Allah but also to take care of them financially as long as they are there.⁵⁵ Hence, it is the responsibility of the Muslims as an individual and the Leader as the head of the state to take financial care of the refugee and provide him with his substantial needs.

In addition to the above principles the Qura'n may lend itself to support this attitude in general. Qura'n says:

إِنْ تُبْدُوا الصَّدَقَاتِ فَبِعَمَّا هِيَ وَإِنْ تُخْفُوهَا وَتُؤْتُوهَا الْفُقَرَاءَ فَهُوَ خَيْرٌ لَّكُمْ

وَيُكَفِّرْ عَنْكُمْ مِّنْ سَيِّئَاتِكُمْ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ⁵⁶

⁵² Riyad as-Salihin, Al-Nawawi, The Book of Miscellany, 625, <https://sunnah.com/> Riyad as-Salihin/

⁵³ Sahih Muslim »The Book of Clothes and Adornment, 2066,

⁵⁴ Sunan an-Nasa'I,» The Book of Jihad, 3178, <https://sunnah.com/nasai>

⁵⁵ Al-Suyuti ,1993, vol. 4, p. 133

⁵⁶ Al-Qura'n 2: 271

'If you give charity openly, it is good; but if you donate it upon the needy in secret, it will be far better for you, and it will compensate for some of your bad deeds. And Allah is aware of all that you do.'

This Quranic order does not differentiate between the poor and needy on the basis of religion. The general terms employed in the verse ensure the welfare of the poor zammie is included in its order. 'because the rulings of the Harbi, when he gets Aman, are the same like the Zammies.' This means that the poor refugee is also included.⁵⁷ The Quranic verse;

لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِنْ دِيَارِكُمْ أَنْ تَبَرُّوهُمْ
وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ⁵⁸

Allah does not forbid you to be good to them (non-believers) and treat them with equity and justice who neither fight against you because of your Religion, nor did they drive you out of your homes . Surely Allah likes those who conduct themselves with equity and justice.

Supports the opinion to be kind to those even who are no believers for their welfare and well being. Imam Abu Hanifa and Imam Muhammad conclude that being generous, spending money of sadaqa on the zammie is commanded to do that. For the welfare even zakat can be given to them as Prophet (SAW) said: The Prophet (SAW) sent Hazrat Moa'az to Yemen, he ordered him

خذها من أغنيائهم وردّها في فقرائهم⁵⁹

Take money from the rich Muslims and give it to the poor people there "

The Islamic state has different rules regarding its financial system, it has its own nature and identity. Zakat should be collected from Muslims and spent mainly on poor Muslims, Other non-Muslim citizens in the Islamic state could enjoy the financial help from other sources, such as Sadaqa. This issue is minor as long as the help is available for the needy. As Louis Henkin⁶⁰ from United States commented during the conversation to draft the Article 23 of the Convention: 'it is clear that the refugees should be given the same treatment with respect to public relief and support as was

⁵⁷ Al-Kāsānī, 1982, vol. 2, p. 49- Ibn Rushd (n.d., vol. 1, p. 297)

⁵⁸ Al-Qura'n 60: 8

⁵⁹ Al-Shaybānī, A., 1991. *Al-ahād wa al-Mathānī*. Riyadh: Dār al-Rāya (eds B.Faysal & A. al-Jawābra 1985, vol. 1, p. 123); see also alTahhawi, 1987, vol. 4, p. 372

⁶⁰ Louis Henkin (November 11, 1917 – October 14, 2010), widely considered one of the most influential contemporary scholars of international law and the foreign policy of the United States

given to nationals, and it did not matter how the treatment was given if the provided results were the same'.⁶¹

To sum up, it is confirmed that the Islamic teachings and practice provides strong principles that obligate Muslims individually and collectively to help for the welfare of the needy. These laws are enough to rely on in granting the modern time refugee the care and material assistance he needs. So there is enough detailed evidence to conclude that the Islamic teachings is in keeping with Articles number 20, 21, 22, 23 and 24 of the Geneva Convention.

It is significant that it is the responsibility of the Islamic state to take care of the refugees financially. Regardless of the fact that the modern states are melodramatically different to the traditional Islamic states with regard to financial resources, but the responsibility remains the same and the Islamic state is still duty bound by these principles to take care of the refugee financially.

6. Conclusion:

The above mentioned guiding Principles emphasize the duty of states and individuals to protect the refugees against abuses of their rights to live in any society.

- 1) Both Islam and International Law provide them access to all the basic necessities as a refugee. They are given the personal status being the resident in any state in order to be protected.
- 2) For inherited property, and his will the Islamic law is more comprehensive and detailed as compare to the International Law.
- 3) Regarding the welfare of the refugee in International law it is his right to have housing, favourable treatment, the right to education, access to studies of any level.
- 4) For their financial help and support more comprehensively the Islamic tradition oblige Muslims communally and individually to help the poor. This is the order general to everyone, regardless of the race, culture, or the background.
- 5) In the personal status the refugees are given the right to get marry and have his own family. International law allows for the same sex marriages whereas Islamic law considering it against the nature and forbids it.

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