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Islamic Hijrah Law a Guideline for Modern Law [Conditions for granting the asylum]

☆ Hafiz Zulfiqar Ahmad

☆☆ Muhammad Musa

ABSTRACT

This paper highlights the comprehensiveness of the Islamic “Hijrah Law”, which sets several conditions to grant the asylum. In the years after the World War II, the authorities led in building an international system for the protection of refugees, in order to ensure that the nations of the world would never again turn away people fleeing persecution. The 1951 Refugee Convention and its 1967 Protocol created a mechanism for refugees at risk of persecution to seek asylum in other states. The system introduced in different countries is rigorous, requiring detailed interviews, immigration court hearings, as well as extensive security and intelligence vetting. No individual can be granted asylum until this special security process is complete. Still there are numerous weaknesses in these man made laws. Islam, 14 hundred years ago gave such a comprehensive law for the scrutiny and well-being of asylum seekers. Islamic “Hijrah Law” has such a wide range that it can be a guide-line to all man made laws.

Key Words: Islamic Shariah, Asylum in Islam, Hijrah Law

The most beloved people to Allah are those who are most beneficial to the people. The most beloved deed to Allah is to make a human happy, or to remove one of his troubles, or to forgive his debt, or to feed his hunger. Whoever walks with his brother regarding a need until he secures it for him, then Allah the Exalted will make his footing firm across the bridge on the day when the footings are shaken.

Ibn Umar reported: The Prophet Muhammad (ﷺ), said:

"أَحَبُّ النَّاسِ إِلَى اللَّهِ أَنْفَعُهُمْ لِلنَّاسِ"

“The people most beloved to Allah are those who are most beneficial to the people.”⁽¹⁾

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This *Hadith* further defines the spirit of brotherhood which dominates the Muslim community and gives positive examples of how members of that community should treat each other. It states that a Muslim who helps his brother in any way will have Allah's help and blessings in this life and in the Hereafter. The *Hadith* defines clearly that man's real value lies more in his deeds, in his kindness and mercy.

Abu Huraira reported: The Messenger of Allah, peace and blessings be upon him, said:

"مَنْ نَفَسَ عَنْ مُؤْمِنٍ كُرْبَةً مِنْ كُرْبِ الدُّنْيَا نَفَسَ اللَّهُ عَنْهُ كُرْبَةً مِنْ كُرْبِ يَوْمِ الْقِيَامَةِ وَمَنْ
يَسَّرَ عَلَى مُعْسِرٍ يَسَّرَ اللَّهُ عَلَيْهِ فِي الدُّنْيَا وَالْآخِرَةِ"

“Whoever relieves the hardship of a believer in this world, Allah will relieve his hardship on the Day of Resurrection. Whoever helps ease someone in difficulty, Allah will make it easy for him in this world and in the Hereafter.”(2)

The Hadith teaches us to be supportive to others when they are in need. This act can make positive difference in others life for their safety and security. That sympathy for others will become the cause of Allah's blessing for us in the world and hereafter

In another narration, the Prophet (ﷺ) said:

"مَنْ أَنْظَرَ مُعْسِرًا أَوْ وَصَعَ لَهُ أَظْلَهُ اللَّهُ يَوْمَ الْقِيَامَةِ تَحْتَ ظِلِّ عَرْشِهِ يَوْمَ لَا ظِلَّ إِلَّا ظِلُّهُ"

“Whoever grants respite to someone in difficulty or alleviates him, Allah will shade him on the Day of Resurrection when there is no shade but his”(3)

Abu Musa reported: Whenever a beggar, poor and needy person came to the Prophet (ﷺ), he would say:

"اشْفَعُوا فَلْتُوَجَّرُوا"

“Intercede and you will be rewarded”(4)

(1) Tabarani, Abu Al-qasim Sulaiman b Ahmad,(1415) Al-mujam al-awsat, Mu'jam Al-Awsat, dar al-haramain, Cairo, Egypt. v:6, p: 139, #6026

(2) Muslim, Abu Al-Husain Muslim bin Hajjaj, Al-sahih, Dar Ihya al-tras-Beirut, Lebanon. 4:1996,§2580

(3) Timidhi, Abu Isa Muhammad Bin Isa, Al-sunan, Dar Ihya Al-turas al-arabi, Beirut. 3:599, §1306

(4) Bukhari, Muhammad Bin Ismail, Al-sahih, Dar ibn Kathir, Beirut, Lebanon, 5:2242, §5680

The mentioned Ahadith of the Prophet (ﷺ) is to support the helpless in any case. Same kindness is to be shown in the case of the refugees to give them the asylum. In Islam, all genuine motives for asylum are valid. From its beginning, Islam being the mercy for mankind has given the orders for the granting of refuge and the protection of refugees. The Islamic concept, practices and principles on the matter are clearly defined. Islamic Shari'ah embraces a complete and very comprehensive set of rules regarding this topic on the one side; on the other side, the greatest number of refugees are truly Muslims and those hosting them are almost all Muslim States. The refugees presently fleeing to the other States may be divided into two groups, namely: those pushed to escape from their countries under threats of war, torture or persecution; and those interested to improve their status and lifestyle. It is self-evident that the first ones are the 'true refugees' in the eyes of Islam as well as international refugee law.

Islamic Shari'ah sets the checks under which asylum may be granted. Islamic territory includes territories, where Islamic Shari'ah is applied and where all inhabitants, Muslims as well as non-Muslims are living under the Muslim protection, enjoy the *Aman* of Islam. Imam Abu-Haneefah sets three conditions for the area of Muslim land, namely: Islamic provisions are visible in the area, i.e. that Islamic Shari'ah is the applicable law. It is neighboring to Muslim land its inhabitants; Muslims as well as non-Muslims (*zimmis*) enjoy the *Aman* of Muslims⁽⁵⁾. The Malikites maintain that Daral-Islam, (Land of Islam) is that where Muslim provisions prevail and the Shafi'tes maintain it is the land where Muslim inhabitants can display the provisions of Islam. According to Hanbali jurisprudence, "Every land, where Islamic provisions prevail, is a Muslim land, but any land, where the provisions of non-believers prevail, is a land of non-believers and there is no other land but those."⁽⁶⁾ Asylum may be granted in the places subject to the jurisdiction and authority of the Islamic state, such as premises of diplomatic missions or military vessels.⁽⁷⁾ Muslim jurists also recognize asylum granted by other states, in accordance with the "local jurisdiction" rule and non-extension of Islamic state jurisdiction to areas beyond Muslim land.

THE ONE SHOULD BE IN THE ISLAMIC TERRITORY:

The Asylum is to be granted to the one who comes to the Muslim state and requests for refuge. The refugee can show unwillingness or inability to avail himself the protection of the state of his nationality. The arrival of that person to Muslim land and his desire to stay there implies such unwillingness or inability. The words' *Istijarah* and *Ijarah*, mentioned in the Holy Qur'an, imply the same concept.

(5) Al-Kasani says: There is no difference between our friends, the Hanafites that Darul- Kufr (non-Muslim land) shall be considered as Daral-Islam, (land of Islam) if laws and regulations emerge there.", al-Kasani, Abu-Bakr ibn Mas'oud: *badai' as-sanai'*, verified by 'Adnan Yaseen Darweesh, Beirut, Dar Ihya; at-Turath al-Islami House , 3rd ed. 1421 AH (2000 AD, Vol. 6, p. 12

(6) Imam ibn Moflih al-Hanbali: *al-adaab ash-shar'iyah wal- minah al-mar'afiyah*, Riyadh modern Bookshop, Riyadh, 1391 AH (1971 AD), Vol. 1, p. 213.

(7) *ibid*

﴿وَإِنْ أَحَدٌ مِّنَ الْمُشْرِكِينَ اسْتَجَارَكَ فَأَجِرْهُ حَتَّىٰ يَسْمَعَ كَلَامَ اللَّهِ ثُمَّ أَبْلِغْهُ مَأْمَنَهُ ذَلِكَ بِأَنَّهُمْ قَوْمٌ لَا يَعْلَمُونَ﴾

“If any one of the idolaters seeks your protection, then grant him protection so that he may hear the words of Allah. Then deliver him to his place of safety. That is because they are a people who do not know.”⁽⁸⁾

Arriving to the Muslim state with a request for asylum is the condition to grant the refugee to someone. In Islamic law, all individuals, including non-Muslims, have the right to flee persecution and seek protection in an Islamic community.⁽⁹⁾ According to Islam asylum should be provided without discriminating between free people and those who are enslaved, rich and poor, men and women, or Muslims and non-Muslims.⁽¹⁰⁾ According the Islamic law one cannot be granted refuge if himself/herself not willing to take *Aman*, *Istijarah* in Islamic state.

THERE SHOULD BE A MOTIVE FOR ASYLUM

This means that the granting of asylum is not only contingent upon the fact that the person had fled to Muslim land owing to fear of “persecution” they are subject to. Additionally, asylum may be granted to any person, who wishes to reside in Muslim land, because he embraced Islam or because he wants to live as a non-Muslim under protection in Muslim land (zimmi or a musta’min). Thus, unlike the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, which exclusively defines a refugee as someone who flees for fear of persecution, Islam adopts a broad definition of a refugee.

NON-CONFLICT OF ASYLUM WITH SHARI’AH RULES:

The deep rooted Arabic civilizations and customs have, for a very long time to serve as a solid foundation for protection of human beings and preserving their dignity. The Islamic Shari’a explains the humanitarian principles of brotherhood, equality, fairness and tolerance among human beings. Islam encourages to benefit the society by helping others and to be the source of comfort for those who seek asylum. Islam provides a framework for justice in inter-personal relationships, towards the poor and needy and connections between communities and nations.⁽¹¹⁾ Naturally, the granting of asylum in terms of its essence, outcomes or effects, should not conflict with the rules and provisions

(8) Al-Quran, 9:6

(9) Khadija Elmadad, (2008), Asylum in Islam and in Modern Refugee Law,” Refugee Survey Quarterly 27, No. 2. P 54.

(10) Nida Kirmani and Ajaz Ahmed Khan, (2008), Does Faith Matter: An Examination of Islamic Relief’s Work with Refugees and Internally Displaced Persons,” Refugee Survey Quarterly 27, no. 2.p:43.

(11) Muhammad Nur Manuty, (2008), The Protection of Refugees in Islam: Pluralism and Inclusivity, Refugee Survey Quarterly 27, no. 2.p:25

of Shari' ah. In any case the refugee and asylum should be under the commands given by Islamic Shariah.

Faith and beliefs play an irrefutable role in defending the rights of refugees and asylum seekers. Respect for refugees and asylum seekers and appreciation of those who offer refuge have a special place in sharia. Islam pays special attention to the suffering of forced migrants.

PERSECUTION

Refuge is granted under the Islamic law to the one who is facing the persecution, threat, torture and brutality of different kinds as Quran says:

﴿وَالَّذِينَ هَاجَرُوا فِي اللَّهِ مِنْ بَعْدِ مَا ظَلَمُوا﴾

“And those who emigrated after they had been subjected to (different kinds of) torture and brutality...”⁽¹²⁾

"والذين فارقوا قومهم ودورهم وأوطانهم عداوة لهم في الله على كفرهم إلى آخرين غيرهم"

“And those who have lost their people and their homes and their countries, their enmity to them (the other’s disbelief) is for the sake God”⁽¹³⁾

The reason to the migration is facing persecution for the cause of Islam that persecution becomes the life threat or can become threat for future.

قَالُوا كُنَّا مُسْتَضْعَفِينَ فِي الْأَرْضِ قَالُوا أَلَمْ تَكُنْ أَرْضُ اللَّهِ وَاسِعَةً فَتُهَاجِرُوا فِيهَا

“What condition were you in? (You neither struggled to promote justice, tolerance and peace nor left for the land of equity and peace.)’ They (regretfully) reply: ‘We were powerless and helpless in the land.’ The angels will say: ‘Was not Allah’s earth vast enough for you to emigrate in it (somewhere)?’”⁽¹⁴⁾

"فتخرجوا من أَرْضِكُمْ ودوركم"

“And you shall come out of your land and your house (migrate)”⁽¹⁵⁾

(12) Al-Quran, 16:41

(13) <http://quran.ksu.edu.sa/tafseer/tabary/sura16-aya41.html>

(14) Al-Quran, 4:97

(15) <http://quran.ksu.edu.sa/tafseer/tabary/sura4-aya97.html>

The Quranic words “*Was not Allah’s earth vast enough for you to emigrate in*” encourages to move to some other place for life security to avoid the persecution. The Muslims were facing the persecution in Makkah and migrated to Abyssinia in order to save the lives.

﴿وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ الَّذِينَ يَقُولُونَ رَبَّنَا أَخْرِجْنَا مِنْ هَذِهِ الْقَرْيَةِ الظَّالِمِ أَهْلُهَا وَاجْعَل لَّنَا مِن لَّدُنكَ وَلِيًّا وَاجْعَل لَّنَا مِن لَّدُنكَ نَصِيرًا﴾

“Those helpless (oppressed and tyrannized) men, women and children who, (depressed by the oppression and tyranny,) call out (for their freedom): ‘O our Lord! Rescue us from this town whose (affluent and influential) people are oppressors and appoint for us some guardian from Your Presence and make someone our helper from Your Presence.’”(16)

﴿وَنَجَّيْنَاهُ وَلُوطًا إِلَى الْأَرْضِ الَّتِي بَارَكْنَا فِيهَا لِلْعَالَمِينَ﴾

“And (from Iraq) We rescued Ibrahim (Abraham) and Lut (Lot, his nephew, the son of his brother Haran,) towards (Syria), the land in which We have placed blessings for the people of the world.”(17)

It is the sunnah of the Prophets to migrate, to take refuge in other places if they have life threat. As Hazrat Ibrahim (AS) migrated from Iraq, Hazrat Mosa came in Egypt, The Prophet (ﷺ) migrated to Madinah.(18)

HELPLESS, WOMAN, CHILDREN

Resettlement is considered a durable solution for refugees who cannot return to their countries of origin or integrate into the current countries that are hosting them. It’s life-saving alternative for refugees around the world. Refugees seeking resettlement must pass through a series of steps aimed at ensuring they will not pose a security risk to the hosting country. After a step-by-step overview of the process only the helpless people, woman and children should be given the asylum as the security check is mentioned in Quran:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِنَ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ﴾

(16) Al-Quran, 4:75

(17) Al-Quran, 21:71

(18) Astri Suhrke, (1995), *Refugees and Asylum in the Muslim World*,” from The Cambridge Survey of World Migration, Robin Cohen, ed:Cambridge University Press. p: 457

“O Believers! When the believing women come to you as emigrants, examine them thoroughly. Allah is Well Aware of (the reality of) their faith. Then if you find with certitude that they are true believers, do not send them back to the disbelievers...”⁽¹⁹⁾

Even the Muslim asylum seekers should pass through the security checks for the wellbeing of the host state.

Further the Quran says:

﴿إِلَّا الْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانَ لَّا يَسْتَطِيعُونَ حِيلَةً وَلَا يَهْتَدُونَ سَبِيلًا﴾

“Except for those who are really helpless men, women and children who neither are capable to make any plan nor do they know any way (to escape from there).”⁽²⁰⁾

According to the divine orders passing the security test is important for the approval of refuge request they want.

PROVING THE FAITH:

In some of the cases migration from DAR ul Harb/ Dar ul Kufr becomes essential for Muslims to save their lives. It becomes the proof of faith and their truthfulness to leave Dar ul harb and take refuge in Dar ul Salam, as Muslims migrated from Makkah to Madinah. Quran says:

﴿فَلَا تَتَّخِذُوا مِنْهُمْ أَوْلِيَاءَ حَتَّىٰ يُهَاجِرُوا فِي سَبِيلِ اللَّهِ﴾

“...do not make friends with (any of) them until they emigrate in the Way of Allah (in order to prove their faith and truthfulness)”⁽²¹⁾

"حتى يخرجوا من دار الشرك ويفارقوا أهلها الذين هم بالله مشركون، إلى دار الإسلام وأهلها"

“Until they come out of the house of shirk and leave its people who are in God, polytheists, to the house of Islam and its people”⁽²²⁾

Giving refuge, helping the weak and poor strangers is bound with the condition of the faith. If they are true Muslims then Muslim state is bound to give them asylum.

(19) Al-Quran, 60:10

(20) Al-Quran, 4:98

(21) Al-Quran, 4:89

(22) <http://quran.ksu.edu.sa/tafseer/tabary/sura4-aya89.html>

FINANCIALLY WEAK:

On one hand, there are people who live their lives lavishly. They are not only enjoying the joys of basics but also have what they wish and desire; a luxurious life style providing them an extra comfort. On the other hand, there are people who cannot even afford the basics of life. They do not have shelter to live, food to eat, clothes to dress up, education and healthcare. Unlike the people who have extra are living a comfortable and a posh lives , those who are financially weak they are fighting each day for life. They fail to meet the basic requirements. They are financially week, to such people refuge can be given.

Amr ibn Murrah reported: The Messenger of Allah, peace and blessings be upon him, said:

"مَا مِنْ إِمَامٍ يُغْلِقُ بَابَهُ دُونَ ذَوِي الْحَاجَةِ وَالْحَلَّةِ وَالْمُسْكِنَةِ إِلَّا أَغْلَقَ اللَّهُ أَبْوَابَ السَّمَاءِ دُونَ خَلَّتِهِ وَحَاجَتِهِ وَمَسْكِنَتِهِ"

“There is no leader who closes the door to someone in need, one suffering in poverty, except that Allah closes the gates of the heavens for him when he is suffering in poverty.”⁽²³⁾

The Muslim refugees being poor means deprived financially, politically and socially. They have insufficient nutrition, higher risk of diseases and lack access to healthcare.

﴿وَأُولُوا الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ مِنَ الْمُؤْمِنِينَ وَالْمُهَاجِرِينَ إِلَّا أَنْ تَفْعَلُوا إِلَىٰ أَوْلِيَائِكُمْ مَعْرُوفًا كَانَ ذَلِكَ فِي الْكِتَابِ مَسْطُورًا﴾

“And blood relations have a greater claim one to another (in the distribution of inheritance) in the Book of Allah than (the rest of) the believers and the emigrants except that you desire to do favour to your friends. This Command is written in the Book of Allah.”⁽²⁴⁾

"كان النبي ﷺ قد آخى بين المهاجرين والأنصار أول ما كانت الهجرة، وكانوا يتوارثون على ذلك"

“The Prophet (ﷺ) formed brotherhood between the emigrants and the Ansar. The first was the migration, and they were inheriting it”⁽²⁵⁾

(23) Tirmidhi, Al-sunan, 3:619, §1332

(24) Al-Quran, 33:6

(25) <http://quran.ksu.edu.sa/tafseer/tabary/sura33-aya6.html>

"أن توصوا لهم"

"If you make a will for them"⁽²⁶⁾

Such people should be given asylum in friendly and secure learning environment. Moreover, they should be supported in regaining their self-confidence and self-esteem providing them health care. Simply instead of considering them as a project to help, view them as people to love and respect.

PROMISE TO RETURN BACK WHEN ITS PEACE IN THEIR HOMELAND (NON-MUSLIMS)

One of the better ways to help the deprived poor and needy people is to give them a hand up rather than a hand out. Giving them moral support, showing heartfelt humility and respect is the teaching of Islam. It makes them aware that someone really does care about them and trying to improve their condition. For the refugees even if they are non-Muslims, providing the asylum with the opportunities to improve their condition on their own would increase their self-esteem which is a good job. It would help them discover their own capabilities and capacity and to use them at the right place at the right time. For asylum support them and let them know the real life style, teaching of Islam may bring them to the truth. Allah says:

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

"And if any of the idolaters seeks asylum with you, provide him with protection until he listens to the Words of Allah. Then escort him to his haven. This is because these people do not possess the knowledge (of the Truth)."⁽²⁷⁾

Al-Qurtoby explains the verse:

"وإن أحد من المشركين أي من الذين أمرتك بقتالهم. استجارك أي سأل جوارك، أي

أمانك ودمامك، فأعطه إياه ليسمع القرآن، أي يفهم أحكامه وأوامره ونواهيته"

"and if any of the non- believers (whom you are given order to fight) seek asylum (staying in your safty) with you, give him refuge so he can listen Quran, can learn the orders and negations"⁽²⁸⁾

Helping the helpless in their hard time and giving them support and refuge is a good job. As soon as their home lands are safe, send them back safely. For the refuge it's

(26) Ibid

(27) Al-Quran, 9:6

(28) Al Qortoby, <http://quran.ksu.edu.sa/tafseer/qortobi/sura9-aya6.html>

important to keep in mind that the asylum seeker would go to his home towns. So that it would not become the problem for the hosting country.

THE SPOILS OF WAR IN ARMED CONFLICT

The victorious army used to loot during war as it had been a common practice throughout recorded history. For soldiers, it was considered as a way to supplement their often small income⁽²⁹⁾ and was part of the celebration of victory. On higher levels, the proud showing off loot was an essential part of the typical Roman triumph, and Genghis Khan⁽³⁰⁾ was used to proclaim that the greatest happiness was "to defeat your enemies ... to rob them of their wealth".⁽³¹⁾

In warfare in early history, the spoils of war included the defeated people, which were often enslaved. "The women and children were often engaged into the victorious country's population"⁽³²⁾. They were persecuted, humiliated and treated worse than the animals. The spoils had to work day and night without any expression and they were just given the clothes to wear and food to eat if their master wanted.

Islam changed the historic tradition of the human history, Islam gave a new concept to deal with the "Spoils of war", Islam gave them right, the choice for the freedom even. In the battle of Badr seventy prisoners were taken captive and amongst them were a number of noted Quraish leaders.⁽³³⁾

Narrated Jabir bin 'Abdullah:

"When it was the day (of the battle) of Badr, prisoners of war were brought including Al-Abbas who was undressed. The Prophet looked for a shirt for him. It was found that the shirt of 'Abdullah bin Ubai would do, so the Prophet let him wear it. That was the reason why the Prophet took off and gave his own shirt to 'Abdullah. (The narrator adds, "He had done the Prophet some favor for which the Prophet liked to reward him.")⁽³⁴⁾

William Muir wrote of this period:

(29) Hsi-sheng Chi, *Warlord politics in China, 1916–1928*, Stanford University Press, 1976, ISBN 0-8047-0894-0, str. 93

(30) Genghis Khan (born Temüjin c. 1162 – August 18, 1227) was the founder and first Great Khan of the Mongol Empire. Ratchnevsky, Paul (1991). *Genghis Khan: His Life and Legacy*. Blackwell Publishing. p. 142. ISBN 978-0-631-16785-3.

(31) Henry, Hoyle Howorth, (2008), *History of the Mongols from the 9th to the 19th Century: Part 1 the Mongols Proper and the Kalmyks*, Cosimo.

(32) Sir John Bagot Glubb, 1963(), *The Empire of the Arabs*, Hodder and Stoughton, p.283. "...thousand Christian captives formed part of the loot and were subsequently sold as slaves in the markets of Syria".

(33) Muir, William (1861). *The Life of Mahomet* (Volume 3 ed.). London: Smith, Elder and Co. p. 122. Retrieved 26 February 2015.

(34) Bukhari,al-sahih, Volume 4, Book 52, Number 252"

In pursuance of Mahomet's commands, the citizens of Medîna, and such of the Refugees as possessed houses, received the prisoners, and treated them with much consideration. "Blessings be on the men of Medina!" said one of these prisoners in later days; "they made us ride, while they themselves walked: they gave us wheaten bread to eat when there was little of it, contenting themselves with dates. It is not surprising that when, some time afterwards, their friends came to ransom them, several of the prisoners who had been thus received declared themselves adherents of Islam...Their kindly treatment was thus prolonged, and left a favourable impression on the minds even of those who did not at once give over to Islam"⁽³⁵⁾

Muslims were ordered to treat prisoners of war kindly. Prisoners could not be abused on account of the fact that they were fighting against the Muslims. There is no Islamic law that permits punishment for a prisoner because of his faith. They were to be treated like as if they are given *Aman* in the Muslim state. The Prophet's action sets rule to give asylum to the "Spoils of war."

REFUGEE WITH PERMISSION

The Home Secretary of any country demands that a genuine refugee would claim asylum with the country he or she reaches.

This sounds good and appeals to a certain constituency. The person who had travelled through several countries before claiming asylum simply has request for refuge from the state he wants to stay. The refugee is to be approved by the state authority after checking all the requirements with all necessary checks.

﴿وَإِنْ أَحَدٌ مِّنَ الْمُشْرِكِينَ اسْتَجَارَكَ فَأَجِرْهُ﴾

"And if any of the idolaters seeks asylum with you, provide him with protection"⁽³⁶⁾

Neither the refuge can be granted without state permission, nor can it be given to the one who doesn't want refuge. The verse further explained

"يقول تعالى لنبية صلوات الله وسلامه عليه: ﴿وَإِنْ أَحَدٌ مِّنَ الْمُشْرِكِينَ﴾ الذين أمرتك بقتالهم، وأحللت لك استباحة نفوسهم وأموالهم، استجارك، أي استأمنك فأجبه إلى طلبته"

"Allah orders His Prophet(SAW) Those (And if any of the idolaters) requests you for Aman (to whom you are given order for Jihad) provide his with protection on his request"⁽³⁷⁾

(35) Muir, William (1861). *The Life of Mahomet* (Volume 3 ed.)

(36) Al-Quran, 9:6

So, to sum up, there is an obligation on refugees to claim asylum and the state with all the checks shall approve the request. Without the request by the asylum seeker and the approval by the hosting authorities the step cannot take place.

NON REBELLION AND NON CRIMINALS HISTORY:

Let it be very clear, that an armed and violent opposition to a government can and never will be recognized as a positive act. In his landmark study of the Islamic law of rebellion, Khaled Abou El Fadl defines rebellion as ‘the act of resisting or defying the authority of those in power’.

The concept of rebellion in Islamic law comes under the doctrine of *fasad fil-ard* (‘disturbing peace and order in the land’).

﴿قَالُوا يَا ذَا الْقَرْنَيْنِ إِنَّ يَأْجُوجَ وَمَأْجُوجَ مُفْسِدُونَ فِي الْأَرْضِ فَهَلْ نَجْعَلُ لَكَ خَرْجًا عَلَىٰ
أَنْ تَجْعَلَ بَيْنَنَا وَبَيْنَهُمْ سَدًّا﴾

“They said: ‘O Dhu’l-Qarnain! Gog and Magog have spread disorder in the land. Should we fix some money (as a tribute) for you on this (condition) that you raise a high wall.’⁽³⁸⁾

According to the Quranic order the *Mofsed-e-filarz* spreads corruption on Earth and threatens social and political well-being. He is the one who is charged with spreading corruption. Gross offenders of the moral order and enemies of peace on Earth should be set in prison rather than to give them asylum.

﴿وَيُفْسِدُونَ فِي الْأَرْضِ أُولَئِكَ هُمُ اللَّعْنَةُ وَهُمْ سُوءُ الدَّارِ﴾

“...and do mischief and strive in the land — upon them is the curse and for them is evil home”.⁽³⁹⁾

"ويفسدون في الأرض أي بالكفر وارتكاب المعاصي"

“Disorder, trouble in land means with their Kufr and committing crime”⁽⁴⁰⁾

The expression *fasad-fil-ard* includes the past conduct of the offender or whether he has any prior convictions, or the brutal or shocking manner in which the crime has been committed which is disgraceful to the public conscience. If the offender is considered a potential danger to the community, or if the crime has been committed in any of the

(37) Ibn Kaseer, Ismail bin Umar, (1401), Tafseer ibn e Kathir, Dar al-fikr, Beirut, Lebanon.2:338
<http://www.alro7.net/ayaq.php?langg=arabic&aya=6&sourid=9>

(38) Quran, 18:94

(39) Al-Quran, 13:25

(40) <http://quran.ksu.edu.sa/tafseer/qortobi/sura13-aya25.html>

context can be a threat for the state. To such person, group refuge cannot be granted. Islamic law puts some additional restrictions on the authority of the state to deal with sick criminals rather than to give them asylum. The reason is obvious. Islamic law talks in terms of peace irrespective the rebel is Muslim or non-Muslim.

CONCLUSION:

This paper has sought to explore some of the conditions to grant refuge under the commands of Islamic law. The primary focus of this paper has been on the comprehensiveness Islamic Hijrah law. In order to regulate the modern world refugee crises it is necessary to put some checks. The authorities should counter check whether the person applying for asylum is genuine in his claim or his claim is based on fake reports. The conditions applied through International law with all of its protocols still need improvement. Islamic law hundreds of the years ago standard the situations to grant asylum.

1. The Spoils of War in armed conflict can be granted the asylum if the revival in his country is not possible yet.
2. One can be granted the asylum if he is having life threat and his own authorities cant assure him/her security.
3. One can have the refugee status with granted with permissions (illegal residents are not considered as a refugee)
4. One must have to prove his faith for asylum in case he is Muslim, if the applicant is non-Muslim he/she needs to prove loyalty towards the host country.
5. The refuge should not have any conflict with Shari'ah rules. One should Promise to return back when its peace in their homeland (non-Muslims) considering the extra burden for the host country.

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