



**MALTREATMENT OF PRISONERS OF
WAR:**

**AN INQUIRY INTO SOME PERSPECTIVES
UNDER THE GENEVA CONVENTIONS
AND SHARIAH**

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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and a bibliography is appended.

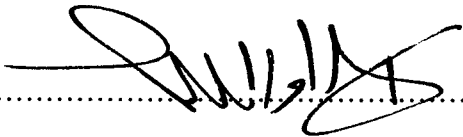
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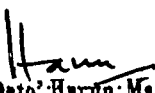
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*To my mother
and to the
memory of my
father*

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ABSTRACT

The history of plight and sufferings of POWs is a long and pathetic one. Several legislative measures have been taken internationally in order to prevent maltreatment of POWs; the Geneva Convention III of 1949 being the latest one. This study seeks to analyze and evaluate provisions of the Geneva Convention pertaining to some of the basic aspects of treatment of POWs so as to find how far those legislative measures have been effective. The main objective of this study is to prove that a coherent and logical legal framework can be derived from an Islamic perspective which offers not only the basis for the humane treatment of POWs but also defines their rights. It has been established that Shari'ah offers a sound and systematic paradigm in this regard which can satisfy both; an obligation to treat the prisoners fairly, as well as a responsibility to practise Islam completely.

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However, all the shortcomings that remain are exclusively mine.

Fazlul Karim

Dec. 1996.

ABBREVIATIONS

| | | |
|------------|---|---|
| A.J.I.L. | : | American Journal of International Law |
| C.U.N. | : | Charter of the United Nations |
| D.E.F. | : | Disarmed Enemy Force |
| D.P. | : | Detaining Power |
| D.U. | : | Depleted Uranium |
| G.C. | : | Geneva Convention |
| I.C.R.C. | : | International Committee of Red Cross |
| I.D.F. | : | Israeli Defence Force |
| P.B.U.H. | : | Peace Be Upon Him |
| P.O.W. | : | Prisoner of War |
| P.R.C.S. | : | Palestine Red Crescent Society |
| P.W.T.E. | : | Prisoners of War Temporary Enclosure |
| (R) | : | <i>Radhiallahu `Anhu</i> |
| S.A.W. | : | <i>Sallallahu `Alaihi Wasallam</i> |
| S.H.A.E.F. | : | Supreme Headquarters, Allied Expeditionary Force |
| S.W.T. | : | <i>Subhanahu Wa Ta'ala</i> |
| U.N. | : | United Nations |
| U.S. | : | United States |
| W.W. | : | World War |

NOTES ON TRANSLITERATION

The following system has been followed in transliterating Arabic words (without diacritics).

| | | | | | |
|---|----|---|----|----|----|
| ا | a | ز | z | ق | q |
| آ | a | س | s | ك | k |
| ب | b | ش | sh | م | m |
| ت | t | س | s | ن | n |
| ث | th | د | d | هـ | h |
| ج | j | ذ | z | و | w |
| ح | h | ز | z | و | u |
| خ | kh | ع | c | و | au |
| د | d | غ | gh | ي | y |
| ذ | dh | ف | f | ي | i |
| ر | r | ل | l | ي | ay |

Source: Encyclopedia of Islam (Second Edition)

CHAPTER

ONE

CHAPTER ONE

GENERAL INTRODUCTION

1. STATEMENT OF PROBLEM

Prisoners of war are, perhaps, the most helpless persons during a war. Their capture is taken as a vital gain by the Detaining Powers as primarily, it deprives the 'enemy' of manpower. And secondarily, they are a good source of information and their capture enhances the bargaining power of the captor.

As prisoners of war are in the control of the detaining power, they are subjected to many physical, moral and mental deprivations and hardships. Often they are maltreated and physically tortured and even brainwashed. The present century has borne witness to innumerable cases of cruelty to the helpless prisoners of war.

International rules against the maltreatment of POWs do exist, such as The Geneva Convention III of 1949, but the captors have shown a disregard for such rules too often. And their acts have made these international rules almost ineffective.

In Islam, prisoners of war are protected from any form of maltreatment while in captivity. The holy Qur'an and the Prophetic traditions clearly recommend to treat the prisoners fairly. As a revealed guidance to the whole mankind, Islam has set up the principles and guidelines even for the time of war. Though, these guidelines are not separately or systematically codified, they can be deduced from the principal sources of Shariah.

In this dissertation, an attempt is made to find to what extent the Geneva Conventions relative to the treatment of prisoners of war have been effective to protect prisoners from the ill-treatment of the captors. Similarly, the principles of Shariah with regard to some of the basic aspects of the treatment of POWs will also be examined in the later part of the dissertation with simultaneous reference to the Geneva Convention III of 1949.

2. OBJECTIVES OF THE STUDY

The aims of this study can be epitomized as follows:

- I. To focus on the maltreatment of POWs and highlight their plight so as to increase awareness for their better and humane treatment.
- ii. To evaluate the effectiveness of the Geneva Convention in protecting POWs from the ill-treatment of the captors in modern warfare.
- iii. To study the position of Shariah with regard to some of the basic and humanitarian aspects of treatment of POWs.

3. METHODOLOGY AND THE OUTLINE OF CHAPTERS

This study will be a historical and textual research which involves the analysis of concepts and issues of treatment of POWs from Islamic as well as general perspectives. Thus, original and secondary sources

will simultaneously be consulted wherever they are relevant to the issues of treatment of prisoners of war.

This dissertation will systematically analyze and evaluate some of the historical as well as contemporary developments with regard to the maltreatment of POWs. Islamic perspectives in this regard will also be discussed with special reference to the Geneva Convention III of 1949.

To this effect, Chapter one will examine the definition of POWs given by both; the Geneva Convention III of 1949 and Shariah. Islamic viewpoint regarding captivation of prisoners will also be highlighted in this chapter.

Chapter two will briefly focus on the historical background, whereby it will be shown that maltreatment of POWs has a long history. This chapter will also highlight how their status started to improve, though slightly, through a gradual process from seventeenth century till present (20th) century.

Chapter three analyses how far the Geneva Convention III of 1949 has been effective in protecting prisoners from numerous kinds of ill-treatment in the context of modern warfare. Some of the major casualties, which took place specially in the 2nd half of the present century, have been briefly evaluated in the light of the Geneva Convention.

Chapter four proceeds with the international legal developments relating to the treatment of POWs. It is examined in this chapter how and when maltreatment of POWs was recognized as a 'war crime' in the positive international law.

Chapter five, the last chapter of this dissertation, comes up with Islamic perspectives. It explores and assesses some of the basic aspects of treatment of prisoners of war in Islam. It also examines how far the provisions of the Geneva Convention have been in line with the principles of Shariah.

PRISONERS OF WAR DEFINED

1. ACCORDING TO GENEVA CONVENTION III 1949

'Geneva Convention Relative to the treatment of Prisoners of War of August 12, 1949' has defined Prisoners of War in details.¹ According to the Convention, Prisoners of War, who have fallen in the power of the enemy, are the persons belonging to one of the following categories :

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.

Thus, the status of a POW is often determined by the nature of his activities before his capture. A typical example of a person entitled to POW status is that of an enemy soldier of a recognised belligerent captured, while performing his normal military duties during an armed conflict.²

¹ Article 4, *The Geneva Convention 1949*, International Committee of the Red Cross (1986), Geneva.

² Hingorani R.C. *Prisoners of War* (1982) Oceana Publications, New York, p. 19, Also Article 4, Geneva Convention III, 1949.

2. Members of other militias and members of other volunteer corps including those of organized resistance movements, provided they fulfill the conditions laid down by this Article.

Armed forces may consist of either standing armies or national militia and volunteer corps which may be called in the time of emergency to do active service in the force. If the nation is large and rich enough to afford a standing army, it maintains it. In the case of a small State, however, it may maintain a national militia for emergency purposes.

When such volunteer forces are captured by a belligerent Power, they are considered and entitled to the POW status so long they fulfill certain conditions laid down by this Article. Some of the important aspects of the conditions are : that he should have a commander, wear a distinct uniform, keep arms openly and have a law-abiding attitude toward the rules and customs of war.³

³ Article 4, *Geneva Convention III 1949*, Also Hingorani, op. cit., p.39.

3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

According to the above rule, the grant of POW status does not depend upon recognition of one of the conflicting parties by the other. For instance, most Arab States and many Muslim States have not recognised the State of Israel. If Israeli soldiers were to be captured by any of those Arab States, they should be treated as POWs by virtue of this Article.⁴

4. Persons who accompany the armed forces without actually being members thereof, provided that they have received authorization from the armed forces which they accompany.

There are other categories of personnel who accompany the armed forces. These categories of personnel do not enjoy military ranks and

⁴ Hingorani. op. cit., p. 38.

consist of civilian members of the military aircraft, war correspondents, supply contractors, members of labour units and such other units responsible for the welfare of the armed forces. If such personnel are captured, they are entitled to be treated as POW.⁵

5. Members of crews, pilots etc who do not benefit by more favourable treatment under any other provisions of the international law.

There are non-combatant personnel in the armed forces who have military ranks but they do not take part in active hostilities. These units comprise of members of crews, including masters, pilots and the crews of civil aircraft of the parties to the conflict, staff of the Judge Advocate of the Army, intelligence staff and such other personnel.⁶ Persons belonging to such units are entitled to POW status if they are captured by the enemy.

6. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms

⁵ Article 4A Clause 4 of the Geneva Convention III, 1949.

⁶ Article 4A Clause 5 of the Geneva Convention III 1949, also Hingorani, op. cit., p. 40.