



Countering
Imam Samudra's
Justification For The

BALI BOMBING



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The Ruling of *Jihad*: *Fardhu Ain* and *Fardhu Kifayah*

Imam Samudra views that *jihad* today is *fardhu ain* (personal obligation) upon every single Muslim. This is because the classical Muslim scholars ruled that if an inch of Muslim's land is seized than it becomes incumbent on all Muslims to liberate it through armed *jihad*. In today's context, Imam Samudra argues that there are plenty of Muslim lands that remain occupied by non-Muslims such as Palestine, Iraq, Afghanistan, Chechnya, Kashmir and Mindanao. Since people of the respective lands are not able to repel the enemy by themselves, Muslims all over the world are to render their hands and participate in *jihad* against the occupying forces.

Similar views are also expressed by many contemporary Muslim scholars. When Afghanistan was invaded by the Russian army, Abdullah Azzam wrote a book specifically on this issue and concluded that *jihad* was *fardhu ain* (personal obligation). His view was supported by many other Muslim scholars in a form of testimony published in his book.¹³⁰ Such a sentiment was also expressed in the case of the Israeli occupation of Palestinian land and the Ameri-

can wars on Iraq and Afghanistan.¹³¹

Nevertheless, it is important to note that Muslim scholars have ruled that laws of war can only be administered and executed by the *Ulil Amri*, or persons of appropriate authority. No individuals or groups are allowed to declare and wage war or *jihad* in the name of Islam or the community. As war will always affect the public at large, the declaration of war requires a proper mandate. The best people to hold such a mandate are those who are mandated to be the government. Furthermore, the teaching of *syura* (consultation) in Islam requires proper consultation of the people before war can be waged in their name. A serious matter such as the waging of war, if left to individuals or Muslim groups to decide and without going through a proper consultation process, will only create chaos and injustice — which is against the principle of any religion.¹³²

In the history of the Prophet, one would find that *jihad* was permitted towards the end of the Meccan period but was not implemented by him until he was in Medina. Before launching his first expedition, Prophet Muhammad called for a meeting of the *Muhajirin* (Muslim migrants from Mecca) and the *Ansar* (Helpers, Muslims of Medina) in order to receive their mandate. He was especially careful to consult and consider the opinions of the *Ansars* who were new to Islam. Jihad was launched after the leader of the *Ansars* made a speech declaring that they will march together with their fellow Muslims and the Prophet to protect Medina from the hostility of the Meccan people.

Only in a situation where the government has collapsed, are Muslims allowed to organise themselves collectively to fight against any aggression, as what happened in Afghanistan during the invasion by Soviet Union.

Imam Samudra's view that *jihad* is *fardhu ain* is at best his personal opinion. He has no authority to declare *jihad* against anybody on behalf of Muslims. Neither can he operationalise his view by committing the Bali bombing because it is against the principle of proper authority held by the Muslim scholars. It is also wrong for him to judge others who do not agree with his act.

Similarly, Jemaah Islamiyah's activities in the name of *jihad* and Al-Qaeda's declaration of *jihad* in the name of the Muslim *ummah* are not legitimate. The Muslim community neither approved of, nor gave mandates for such actions taken in their name. Even worse still, they failed and refused to consider the adverse outcome of their actions, not only on the general public, but also on

other Muslims and Muslim groups.

Today, Muslim groups that have had no relations with these groups have also come under suspicion. The good relations that they have meticulously fostered over decades with non-Muslims, have been destroyed within months due to the reckless actions of a few. Muslim activists who had no connection with these groups have had to face public outrage and explain Islam all over again to non-Muslims.

Another important point to note is that the ruling for armed *jihad* in Islam may be *fardhu ain* or *fardhu kifayah*.¹³³ Muslim scholars have different opinions on when armed *jihad* is a *fardhu ain* or *kifayah*. Muslim scholars who view arm *jihad* is *fardhu ain* say so when people of the invaded Muslim land have no capacity to repel the enemy on their own. Thus, the responsibility is transferred to the nearest Muslim community and so on.¹³⁴

It is argued that in deciding on whether the respective people have no sufficient capacity to carry the obligation on their own and to what extent the obligation is transferred to other Muslim communities is not a simple problem in which an absolute result can be obtained. It is a matter of judgment or *ijtihad*. In such situations, often, differences of opinion occur and are unavoidable. When the result of *ijtihad* differs, after each party follows a standard *ijtihad* methodology, one cannot claim his opinion is absolutely right and dismiss others as wrong or misleading. In such a situation, it is permissible for a Muslim who views armed *jihad* as *fardhu kifayah* to choose not to join it and instead perform other forms of *jihad*. He should not be condemned for his action and his action should be best left to be judged by God.

Based on the above understanding, one should not judge a person as being careless or neglectful merely because he does not participate in armed *jihad* or because he prefers other forms of *jihad*. His stand is not totally unfounded because the Quran says:

“With all this, it is not desirable that all of the believers take the field [in time of war]. From within every group in their midst, some shall refrain from going forth to war, and shall devote themselves [instead] to acquiring a deeper knowledge of the Faith, and [thus be able to] teach their home-coming brethren, so that these [too] might guard themselves against evil.” (The Quran, 9:122)

The Prophet also had said that there are various groups of people who although not involved in armed *jihad*, received the same rewards from Allah as those who carried out armed *jihad*. The Prophet had said in *hadiths*:

“Whoever provides provisions for people who fight for the sake of Allah, indeed he has gone to war, and whoever looks after the families of those who fight for the sake of Allah, he has gone to war.” (Narrated by Al-Bukhari & Muslim)

“Indeed, there are several among you in Madinah, those you do not see on the pathways or crossing the valleys, but they are with you in gaining rewards. They are restrained by illness. (Narrated by Muslim)

Assuming that the ruling of *jihad* as *fardhu ain* is accepted, there is another important aspect that needs to be considered before armed *jihad* can be waged which is prioritising of responsibilities because armed *jihad* is not the only *fardhu ain* burdened on the shoulders of the Muslims at any particular point in time.

Prioritising is essential in Islam. Islamic practices are regulated by a dynamic system of prioritising. Priority consideration can be seen in many of the Islamic jurisprudence’s maxims:¹³⁵

- *Difficulty will bring relief*
- *Harm must be eliminated*
- *The origin of a ruling on a certain matter (non-worship) is halal unless there is proof (dalil) on its prohibitions*
- *When any arrangement becomes restricted, it will be made flexible*
- *A crisis allows the prohibited*
- *There is no haram (forbidden) if there is crisis, and there is no makruh (permissible but discouraged) if there is necessity*
- *Harm cannot be eliminated with another kind of harm*
- *If you have to choose between two types of harm, the bigger harm should be overcome by choosing the lesser harm / Choose the lesser of the two evils*
- *Hudud (Islamic criminal punishment) may be aborted because of doubt*
- *The extent of a need is assessed on the crisis, whether it is general or specific*

- *Prioritise a confirmed benefit above a doubtful one*
- *Prioritise a bigger benefit above a smaller one*
- *Prioritise a collective benefit above that for an individual*
- *Prioritise multiple benefits above single ones*
- *Prioritise a permanent benefit above a temporary one*
- *Prioritise the essence of a benefit above its form*
- *Prioritise a stronger future benefit above a weak current one*
- *Harm may not be eliminated with a similar harm or a bigger one*
- *May sustain a lesser harm to avoid a bigger one.*
- *May sustain a specific harm to avoid a general one*
- *A small harm may be forgiven to achieve a bigger benefit*
- *A temporary harm may be forgiven to achieve a permanent benefit*
- *A definite benefit may not be abandoned because of a doubtful harm*

The above maxims embody prioritisation. For instance, the elimination of a bigger harm is prioritised above a smaller one and the elimination of general harm should come before a specific one. Muslim scholars' decision-making frameworks of *Maqasid Syar'iah*¹³⁶, *Dharuriyat*¹³⁷, *Hajiyat*¹³⁸, *Tahsiniyat*¹³⁹ and various other concepts also illustrate how extensive prioritising is in Islam. This is again a matter of judgment (*ijtihad*) by the Muslim scholars in which differences in opinion may be inevitable.

For example, while the protection of Muslims' lives requires Muslims to avenge thousands of Muslims' lives in various lands as claimed by Imam Samudra, there are also thousands of other Muslims' lives that are lost from poverty, poor living conditions and under development such as in Somalia which one must admit, also requires urgent attention and Muslims' care.

The question that needs to be raised here is, "is prioritising armed *jihad* above other *fardhu ain* an absolute rule on all Muslims in all parts of the world without giving due consideration to each Muslim community's context? Is armed *jihad* as a means of liberating Muslims' lands an absolute or the only option to all Muslims with no regard to their context or circumstances vis-à-vis other Islamic obligations?"

It is argued here that the answer is no. Islam requires its followers to give due consideration to context in practising the religion. This means Islam takes into account the reality of the time, environment, individual and other factors in determining rules and in practising the religion. Hence, the ruling for a certain matter may be different due to differences in reality. This applies whether the

rule is a general policy for society, or specific to an individual or a particular group only.¹⁴⁰

A good Muslim is not only one who is able to uphold the fundamentals of the religion, but is also able to contextualise the teachings when the need arises and where necessary. This is based on the following arguments:¹⁴¹

1. Islam was revealed gradually to Prophet Muhammad over 23 years.

The main reason behind this incremental approach was to ensure that the revelation catered to the context and the development of the Muslim society then.

A good example would be the implementation of alcohol prohibition in Islam. Consumption of alcohol was a deeply entrenched habit among the pre-Islamic Arabs. It would have been difficult to immediately and totally prohibit them from drinking alcohol.¹⁴² Consequently, Islam started by criticising the habit first.¹⁴³ Later on, it prohibited Muslims from consuming alcohol when they wanted to perform prayer.¹⁴⁴ Only after 15 years of the revelation, did Islam finally prohibit Muslims from consuming alcohol totally.¹⁴⁵ During the first thirteen years after the prophethood of Muhammad, before the migration to Medina, most of the revelation was on matters pertaining to faith and good morals. This was to suit the context of the Muslims who were weak and under persecution in Mecca. Much of the revelation on criminal justice and business transactions started only after the migration to the Medina. By then, Muslims had already established their political power, and had the need and the authority to implement those social aspects of justice.

2. Abrogation in Islam.

Islam allows for abrogation. Some of the *syariah* laws were abrogated due to the changing circumstances of the Muslim society. The prohibition of alcohol as mentioned above is an example – *syariah*'s earlier stance of mere dissuasion was abrogated in favour of a complete prohibition.¹⁴⁶

3. The application of *rukhsah* in Islamic jurisprudence

Rukhsah refers to concessionary law based on extenuating circumstances; a provision in the *syariah*, which allows concession from a general rule, in the event that the rule involves or causes a debilitating difficulty. The concession is specific to the need.¹⁴⁷

Islam has various check-and-balance systems to ensure convenience in practising it. One of these is *rukhsah*. The Quran says:

“And, behold, with every hardship comes ease” (The Quran, 94:5)

The prohibition against drinking alcohol may be used to illustrate *rukhsah*. Consider the case of a stranded traveler who has lost his way and cannot find any water to drink except for alcohol. If his situation is so critical that he will die if he does not drink that alcohol, then he is allowed a concession to drink the alcohol to preserve his life. In fact, the rule of drinking alcohol in his case has changed from prohibited to compulsory, because Islam does not allow a human being to endanger himself and cause destruction to his body. In Islam, the obligation to preserve one's life must be prioritised above the prohibition of alcohol. The same goes in a situation where alcohol is used for the treatment of a particular ailment when there is no other alternative to it.

Rukhsah is a part of the principle of *syariah* applied to cater to the varying contexts faced by man. It provides flexibility for Muslims when they face different situations.

4. Context is always part of Muslim scholars' consideration in issuing *fatwa* or religious rulings.

One who studies the opinion of Muslim scholars will find that they changed their *fatwa* with reference to the place, time, and person affected by it. In essence due consideration to different situations vis-à-vis space, time and person goes hand in hand when formulating a *fatwa*. This could be further elucidated by what Ibn Qayyim wrote:

*“The existing laws are of two types. One, which will not change from its original form, whether due to time, place or ijtiḥād of the ulama; such as the ‘wajib’ ruling on various obligations, the ‘haram’ ruling on various prohibitions, the hudud rulings decreed by ‘syara’ for various crimes and the like. These rulings are not open to change or ijtiḥād. The second type are those that may change with the current needs, based on time, place and situation, such as the ruling on ta’zīr, its varieties and characteristics.”*¹⁴⁸

Another well-known illustration was a report that during a famine, Umar the

second Caliph after Prophet Muhammad, suspended the implementation of the *hudud* rule, which required the hands of convicted thieves to be cut off. He feared that the offences could have been committed due to hunger caused by the famine. Umar knew that *hudud* could not be implemented if there were any doubts, and that particular context cast serious doubts on the malice behind that act.

In Singapore, the *Fatwa* Committee of the Islamic Religious Council issued a *fatwa* disallowing organ transplants in 1973. The *fatwa* was later changed in 1986 because the advancements in medicine have changed the basis of the *fatwa*.¹⁴⁹

5. Various maxims in Islamic jurisprudence.

The existence of the abovementioned maxims of *fiqh* (Islamic jurisprudence) is also testimony to the practicality and flexibility of Islam.

Yusuf Al-Qardhawi writes that among the blessings from God is the existence of some verses in the Quran that are ambiguous, and hence allows for various interpretations and understanding. These give a wide opportunity to anyone who needs to make various considerations, or choose an opinion that he feels is closer to the truth and the objectives of *syara'*. Certain opinions may be suitable at a certain time, or a certain situation but not in another.¹⁵⁰

6. Practice Islam within one's own capacity.

The Quran says:

"God does not burden any human being with more than he is well able to bear: in his favour shall be whatever good he does, and against him whatever evil he does" (The Quran, 2:286)

'To the extent of its ability' implies that Islam recognises constraints faced by Muslims in practising the religion. Islam acknowledges that human beings are inherently limited in their capacity. Thus, Muslims are only obliged to strive and give the best that they can.

To demand from Muslims beyond what is realistic and practical, is against the principle of justice, a fundamental attribute of Islam and God Himself. This is

the essence of contextualism in Islam.

In conclusion, even if Muslims agree that the Palestinian's struggle against the Israeli occupation is a legitimate *jihad* and an armed *jihad* in Palestine has fallen in the category of *fardhu ain*, this does not mean that every Muslim should adopt a similar approach, strategy or means like the Palestinians or occupy themselves with the issue only until the occupied territory is liberated regardless of the priority or constraint determined by their specific contexts.

Imam Samudra and his like may argue that individual Muslim and Islamic groups are justified to wage armed *jihad* by attacking the enemy wherever they could be found like in the Bali bombing based on their own *ijtihad* because all Muslim rulers are corrupted or fall into the influence of the enemy. Since *jihad* is *fardhu ain* like *solat* (prayer) and fasting, one need not wait for Muslim rulers to perform the obligation if he can perform it on his own.

Here is where the understanding of the principle of 'practicing Islam within one's own capacity is again important because failure to adhere or accept such a principle will cause negative effects such as inflexibility towards a changing situation and environment, upholding impractical and unrealistic expectations or viewpoints and causing wastage of valuable resources due to inappropriate priorities.

This will cause difficulty for Muslims to practice the religion, which is in contradiction with the very essence of Islam as an easy religion. The Quran says:

"..and has laid no hardship on you in [anything that pertains to] religion.." (The Quran, 22: 78)

"God wills that you shall have ease, and does not will you to suffer from hardship..." (The Quran, 2: 185)

Prophet Muhammad has said;

"Give good tidings and do not make them turn away, make it easy and do not make it difficult." (Narrated by Muslim)

In another *hadith*, he has also said;

“Verily the religion is simple and person should not make it difficult lest he is defeated by it.” (Narrated by Al-Bukhari)

It has been mentioned in the previous section that in cases where Muslim rulers as the *Ulil Amri* have failed to play their part based on their authority, and neglected their responsibility, then individuals and Islamic groups do not have a choice, in areas which do not fall under their respective authority or jurisdiction, but to commit to preventive efforts via the tongue, and work patiently within those limitations.

Being patient with the weaknesses of such rulers is enjoined in the *hadith*:

“Anyone who sees something he despised in his leaders should be patient. Verily, anyone who leaves the jemaah [Muslim community] for a short distance will die a jahiliah [disbelieving] death.” (Narrated by Al-Bukhari & Muslim)

Corrupt Muslim rulers are not new in the history of Muslim society. The history of Islam has recorded many such instances, one of which was the adoption of Muktazilite school of thought by some Abbasid rulers. During that period, there was a crackdown on Sunni scholars. Yet, Muslim scholars did not resort to arms. Instead, they persisted in their efforts to correct wrongs through unrelentingly patient dialogue and good counsel.

Muslims should look to the Prophet as the best example for them to emulate. The Prophet established Medina without any use of arms or bloodshed. Unfortunately, some Muslims’ lack of patience lead them to act rashly to the detriment of not only the general public, but also to the Muslims and the Islamic cause they claim to be fighting for.

In the effort of enjoining good and forbidding evil or upholding and defending the interest of Islam and Muslims, it should not be forgotten that Islam lays down some principles for its followers to abide with. One of the principles is that such action should not cause or spark off a greater evil or a bigger detriment, or wipe out greater benefits.¹⁵¹ Muslim scholars have ruled that efforts to prevent or overcome evil such as aggression against Muslims must observe the following precepts:

- a. Harm is avoided according to the capacity to do so.¹⁵²

- b. A specific harm is maintained to avoid a general harm.¹⁵³
- c. Should not do something that may lead to something *haram* (impermissible in Islam), even though it was originally allowed.¹⁵⁴
- d. Harm may not be eliminated with similar harm.¹⁵⁵
- e. A greater harm is eliminated using a lesser harm.¹⁵⁶
- f. When there is conflict between two harms, beware of the greater harm than the lesser one.¹⁵⁷
- g. Avoiding harm is more important than acquiring benefit.¹⁵⁸

As a conclusion for this section, it is asserted here that *jihad* in upholding and defending Islam should not necessarily mean waging an armed struggle against the enemy. The wide meaning of Islam offers Muslims various options in fulfilling such a duty. This option is chosen after due consideration to priorities and constraints determined by the context in which Muslims live in and the balance between benefits and detriment of the choice.