

**Changing world order and the Islamic Jurisprudence:
A study of the Judicial Provisions of Islam and their applications
in Global Multi religious Community
with special reference to Hyderabad, India**

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DECLARATION

I declare that this thesis is my own account of my research and contains as its main content work which has not previously been submitted for a qualification at any tertiary education institution.

D. Justus Moni

.....

(Name and Signature)

To
The Congregation of
Christ Church, Hyderabad
Church of South India

CHANGING WORLD ORDER AND THE ISLAMIC JURISPRUDENCE:

A STUDY OF THE JUDICIAL PROVISIONS OF ISLAM AND THEIR APPLICATIONS IN GLOBAL MULTI RELIGIOUS COMMUNITY WITH SPECIAL REFERENCE TO HYDERABAD, INDIA

ABSTRACT

The global village that desires to see pluralism as the way of life painfully witnesses growing terrorism and communal intolerance. Life for common people every- where has become stressful and uncertain. Well known for its religious plurality and communal harmony, the city of Hyderabad has become one of the victims of communal violence and terrorism. That militancy being considered religious duty and pursued vigorously should be attributed to inadequate scriptural knowledge in any religion. The study is an attempt to understand how the scriptural law of Islam is interpreted to the community in the present situation at Hyderabad - with inherent struggle for distinctive identity of individual faith communities and the use of respective scriptures to justify their actions.

With the definitions for jurisprudence in general, Islamic jurisprudence in particular and a review of earlier studies on the topic lead the study into the details of the technical interpretations of the concept of holy war. The Qur`anic references that are often quoted for Jihad, peace and relationship with non Muslims are studied with their different interpretations. The perspectives of traditionalists, modernists, mystics and commoners on the said references have been studied.

Interpretations of the recognized judicial schools of Islam and their place in the secular Indian law have been considered along with the procedures laid down in law to derive the meaning of ambiguous clauses.

The role of *ulama* plays vital role in conveying the Qur`anic message to the people of the community. Often communal actions are based on the preaching at the Mosque. So also *fatwas* pronounced time to time make their impact in the society.

Hence some *fatwas* in matters affecting inter- religious affairs and the ambiguities therein are taken as examples of untenable interpretation of scriptures.

A comparison is made between Biblical hermeneutics and Muslim interpretation in relation to war and peace. With a few examples of Christ's way of interpreting the Law, and a possible exercise of peace oriented reinterpretation is suggested in line with several modern Muslim scholars.

The findings of the study are:

That, peaceful coexistence is advocated sufficiently in the Qur`anic texts.

That, there are accepted norms set by various schools of law and scriptural scholars for the interpretation, despite the fact it is communicated with a bit of prejudice and ignorance.

That the acclaimed one universal Ummah, bound by common cultural and social and religious life, stands divided in matters of interpretation.

That those who are engaged in the rereading of the Qur`an advocate jihad or holy war against the evil of the society and towards communal harmony.

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TABLE OF CONTENTS

1.0	CHAPTER I INTRODUCTION	1
1.1	Islamic Jurisprudence	1
1.2	Changing World Order	3
1.3	Erstwhile Hyderabad	4
1.4	Hyderabad of Indian Republic	5
1.5	Communal Violence	5
1.6	Importance of the Study	7
1.7	Methodology	8
2.0	CHAPTER II REVIEW OF EARLIER STUDIES	10
2.1	Problem of Ambiguities	11
2.2	Islamic Faith and Law	13
2.3	Struggle for Islamic Identity	15
2.4	Views of the Mystics	16
2.5	Modernists' Point of View	16
2.6	Plurality and Islam	17
3.0	CHAPTER III ISLAMIC JURISPRUDENCE	19
3.1	Foundations of Muslim Law	19
3.2	Place of Islamic Law in the Secular Indian Law	20
3.3	Principles and Application of Interpretation	20
3.4	Necessity of Innovative Applications	22
3.5	Judicial Schools and their interpretations	22
3.6	Interpretation of Shafi'i School of Law	23
3.7	Interpretation of Hanafi School of Law	23
3.8	Interpretation of Maliki School of Law	25
3.9	Interpretation of Hanbali School of Law	25
3.10	Interpretation of Ithna – Ashari Law	26

3.11	Imami Shi`i	26
3.12	Opinion of Schools of Law and Indian Courts	26
3.13	Ulama and Fatwas	28
3.14	The Concept of Jihad	29
3.15	Views of Commoners on Jihad	30
4.0	CHAPTER IV COMPARISON OF O T WITH QUR`AN	32
4.1	Qur`anic Provisions on Jihad	32
4.2	Concept of War in the Holy Bible	36
4.3	Wars of the Christendom	44
5.0	CHAPTER V RE-READING OF THE QUR`ANIC LAW	46
5.1	Perceptions of the Qur`anic Law	47
5.2	Application of Biblical Hermeneutics	48
5.3	Christian interpretation of the Scriptural Law	48
5.4	Reinterpretation: A Muslim Perspective	52
5.5	Need of Reinterpretation	54
5.6	Norms of Reinterpretation	55
5.6.1	Philosophical interpretation	56
5.6.2	Analytical interpretation	56
5.6.3	Historical interpretation	56
5.6.4	Sociological interpretation	56
5.6.5	Comparative interpretation	56
5.7	Reinterpretation of Jihad	57
5.8	Reinterpretation and Peace making	58
5.9	Reinterpretation and Mysticism	59
5.10	Reinterpretation of Biblical Concept of War	61
5.11	Peace Oriented Judicial Perspectives	63
6.0	CHAPTER VI CHRISTIAN – MUSLIM RELATION	66
6.1	Living in Dialogue	66

6.2	Conflict Resolution	67
6.3	Peace Centers	68
6.4	Bridge Building between other communities	69
6.5	Christian Mysticism in Christ's way	69
6.6	Masih Mosques	69
7.0	CHAPTER VII CONCLUSION	71
7.1	Findings	73
7.2	Recommendations	75
	WORKS CITED	76
	BIBLIOGRAPHY	81

GLOSSARY

Adivasis	:	Aboriginals of India, who are now called Scheduled Tribes
Ahamadis	:	A sect in Islam
Ahl al khitab	:	People of the book, Christians and Jews who had Scriptures
Allah	:	The Muslim name for God
Ambiya	:	Prophets
Aryan	:	Aryan is race believed to have invaded India thousands of years ago and whose religion is Hinduism
Arya Samaj	:	The society of Aryans
Asaf Jhas	:	The Muslim rulers of 17 th century, who ruled Hyderabad
Ashurkhana	:	Khojas' place of worship
Bayan	:	Statement of legal rule
Bohras	:	A sect in Islam
Brahmanic	:	That which is of Brahmins, the priestly caste among Hindus
Dalits	:	The oppressed class of the society, considered as out-castes by Caste Hindus
Din Allah	:	Religion of Allah
Dar ul harb	:	House of war, where Muslims live under Non Islamic Government
Dar ul salam	:	House of peace, Muslims live within Islamic state
Dargah	:	Shrine of a Sufi Saint
Fakir/Fakhir	:	One who leads a religious life under Sufi discipline

Fatwa :	A judicial pronouncement by Ulama
Fiqh :	Law
Furu-al-fiqh :	Branches of Islamic Law
Grandh Saheb:	Scripture of Sikhism
Gujarathi Memons:	A business community originally from the state of Gujarat
Gurudwara :	Sikh's place of worship
Hadis/Hadith:	Traditions of Muhammad, the second source of Islamic law
Hedya/Hidaya :	The book on Sunni Law referred for guidance in particular points
Hinduism :	Religion of Hindus, brought by Aryans
Ijma :	Collective opinion of a council on a matter in issue
Ijtihad :	Logical deduction on a legal question by a learned person
Imam :	Muslim religious leader
Isa :	Jesus
Istidlal :	Exegesis of sentences of Islamic law with required proof
Istihsan :	Exegesis, approving the law of expediency
Istislah :	It is an agreement reached by a party or sect to give a special meaning to a word over and above its literal sense
Jihadul Akbar:	Greater warfare as Meant by Sufis
Jihadul Asghar:	Lesser warfare
Jihad/Jehad :	Holy war
Jihadi :	One engages in jihad/holy war
Jizya :	Poll tax, levied on non - Muslims for protection under Islamic state

Kafir/Khafir :	Unbeliever, Non – Muslim
Khitab/Kitab:	Book, here it is to mean Scripture
Khojas :	A sect in Islam
Koran :	Qur`an is spelt as Koran by some writers
Madinan/Medinan :	Those of Madina/Medina
Masih :	Christ
Masjid :	Mosque, Muslim place of worship
Mohammedan:	Muslims were called Mohammedans in the Indian Law, as mentioned by the British
Mughal dynasty :	The Muslim rulers who ruled most part of India from early 16 th to mid 18 th century A. D. Seven generation of rule was distinguished by its “emperors’ efforts to integrate Hindus and Muslims into a united Indian state” <i>(Encyclopedia Britannica)</i>
Mullah :	Islamic scholar
Musi :	It is a river on whose banks, the city of Hyderabad was built by the Mughal rulers
Namaz :	Public Prayer
Nizam :	Muslim ruler of Hyderabad
Panchayat :	Local committee that deals with disputes
Pirs :	Religious leader with sufi discipline
Purdah :	Curtain; here it means a system by which seclusion of Muslim women is maintained
Qiyas/Kiyas :	Analogical reasoning regarding the Qur`an or Hadis
Rashtriya Swayam Sevak Sangh:	A movement that promotes nationalism and considers Muslims and Christians as followers of foreign religions
Rasul/Razul :	Prophet

Shari`ah	:	Islamic Law based on the Qur`an
Shias	:	A sect in Islam - followers of Ali, husband of Muhammad's daughter
Sufi	:	One who professes mystic principles
Sunnah/Sunnat:		Traditional law basing on the doings of Muhammad
Sunnis	:	Traditionalists, who acknowledge first four Caliphs as Successors of Muhammad the large sect of Islam
Tanakh	:	Jewish Scriptures
Ulama/Ulema:		Doctors of Law in Islam
Ummat/Ummah:		People, here it is to mean Muslim Community
Usul – al – fiqh :		Roots of the Law
Vedas	:	Hindu Scriptures
Vishva Hindu Parishad:		A Hindu fundamentalist movement, opposed to Muslims and Christians
Wahhabis	:	A Muslim revivalist sect
Wakf Board :		A State Body that regulates the properties of Mosques, Shrines or such religious places

CHAPTER I

INTRODUCTION

'Jurisprudence,' a word derived from its Latin equivalent *jurisprudential*, means knowledge of Law. It is also considered as the science of law for it is the knowledge of things, human and divine and of the just and the unjust. It is a formal science, dealing with abstract principles and rules that regulate the relations of humankind and generally recognized as having legal consequences and universal application (Tandon n.d, 4). It is also defined as the philosophical aspect of the knowledge of law in the sense of an enquiry into the first principles of any department of thought (Tandon n.d, 5). According to Prof. John Chipman Gray, jurisprudence stands for the scientific treatment of law (Tandon n.d, 5). By that the law gets interpreted and applied scientifically making universal impact. Knowledge of law is expected to work on the fundamental principles of human relation and common well being.

1.1 Islamic Jurisprudence

In the light of the definition for jurisprudence, Islamic jurisprudence should be understood. Ahmad says, "Muslim Law is founded upon revelation and blend with religion and a doctrine of certitude in the matter of good and evil". He further states that according to the Islamic Law commonly called Shari`a, "What is morally beautiful, that must be done, and what is morally ugly must not be done" (Ahmad 1995, 6). Shari`a, considered to be the totality of Allah's commandment is primarily a doctrine of duties wherein legal considerations and individual rights are secondary.

The proper law in Islam is *Fiqh* meaning intelligence. It covers the whole science of jurisprudence implying independent exercise of reasoning where solution for points of law is absent in *Qur`an* or *Hadith*, the main sources of the

Shari`a. "*Fiqh* has been defined by the Muslim jurists as the knowledge of one's right and obligation derived from *Qur`an* or *Hadis* or deduced there from, or about which the learned have agreed" (Ahmad 1995, 6). Faith in God and acknowledgement of His authority over human actions and belief in the prophethood of Muhammad are the basis for the Muslim jurisprudence. "God alone is the legislator in Islam and *Qur'an* is the Holy law book. The authority to make laws primarily belongs to God and He alone has supreme legislative power in the Islamic system" (Ahmad 1995, 7).

It is believed that God has been promulgating His laws from time to time through His messengers or *Rusul* and Prophets or *Anbiya*. As further revelation after the death of Muhammad, the last prophet, is not possible God the divine Legislator delegated the power to lay down laws by the resolution of those who are competent in the community. Such a principle of *ijma* or consensus is the only available authority of legislation in the present Islamic system (Ahmad 1995, 7). "The Muslim legal system differs from other modern systems, in the sense that it purports to have its sole source of Divine Will communicated, on its final form, through a single human channel" (Ahmad 1995, 7).

"Islamic jurisprudence", according to Subhi Mahmasani, "dealt with questions of religion and acts of worship, and with legal transactions, along with all provisions, rules and particulars derived from them. That is why jurists in Islam were at once men of religion and jurisprudence. They were called 'scholars' (*ulama*) because their field of study included all departments of ancient knowledge" (Mahmasani 1982, 181). Where Qur`anic provisions are ambiguous, and when applied in unforeseen situations and questions, they lead the communities to disputes and differences. Diversity of interpretations and opinions and disagreements among jurists in applying principles to practical cases brought a certain amount of flexibility in Islamic jurisprudence (Mahmasani 1982, 183, 184).

Under the influence of the secular West many Muslim states started modernizing the Islamic law in the nineteenth century both in the Middle East and in the Indian subcontinent. Shari`a was considered as 'a source' and not 'the source' of their nation's law, thereby developing a modern legal system. Shari`a was restricted to family law in such countries.

“In the contemporary Islamic world there have been renewed demands for a return to a more Islamic way of life. This reemergence of Islam in the political sphere has been accompanied by demands for a more Islamic legal system by those who maintain that it is the Shari`a that determines the Islamic character of a state and its people” (Donohue 1982, 180).

1.2 Changing World Order

The unforeseen situations as mentioned above have grown in number and pose multifarious challenges to the traditional faiths and religious convictions to which Qur`anic law is no exception. Western Capitalism followed by Communist Socialism and the current Globalization necessitate new interpretations of the old commandments and clear definitions of the ambiguities that are within the religious laws.

The changing world order under globalization is characterized by “...transnationalisation of political processes and systems, of civil societies and the global integration of social life” (Razu 2001, 100). According to Mohan Razu the new world order “has given more space for the free movement to global forces. ...All the societies and economies have now opened themselves to the market process. People of the world belonging to different nations are destined to live in the global market. ...Globalization refers to the multiplicity of linkages and interconnections between the state societies which make up the present world system” (Razu 2001, 100). Such a scenario is common to all people groups and nations. Under this situation that is affected by the worldwide changes what is the understanding of the Muslim community in terms of its societal life. How do they relate to the multi-religious community around them in the city of Hyderabad which is highly influenced by the globalization? How do they understand their scripture in terms of peaceful coexistence? These are the questions considered in this study in the context Hyderabad.

1.3 Erstwhile Hyderabad

The historic city of Hyderabad situated 500 kilometers south of the Central India is where the Mughal dynasty of Asaf Jahs (popularly known as Nizams of Hyderabad) established their rule and developed Arab culture and

spread Islamic religion amidst a people predominantly of Hindu and animistic religions. The natives were so tolerant that they did almost nothing to prevent such foreign forces from establishing their government and a religious faith that was hitherto unknown to them.

Hyderabad Nizam's domain extended up to Murtizapur in the North, which is presently in the state of Maharashtra, parts of the present Karnataka and the southern districts of Hyderabad. There were settlers from North India, foreigners from Central Asia, Iran and the Hadramaut Coast living together under the rule of the Nizams. The population was a mix of Gujarathi Memons, Khojas, Bohras, Ahmadis and Wahhabis. There were Arabs with their descendants and offsprings of mixed marriages forming part of the community (Schwerin 1978, 119).

The Hyderabad that was established on the Musi riverbeds is now known as the walled city or old city and the population is multi religious from its very inception. There are Christians, Sikhs, Jains, Zoroastrians and Hindus besides Muslims with their various Sects where the rulers were Sunni Muslims. The significant feature of Hyderabad, relevant to this study is the communal harmony that was in existence under the Nizam's governance. Every street in the city had people of different faiths. Mosques, Temples, Gurudwaras, Ashurkhanas of Shias and Churches were found in the vicinity of each other. The Nizam of Hyderabad was so generous that he contributed for the construction of Mosques, Churches and other worship places. Schwerin says "Like no other Indian city it has, though, preserved a measure of Oriental charm and communal harmony as well as variety of language, dress, and customs" (Schwerin 1978, 123).

1.4 Hyderabad of Indian Republic

The Nizam of Hyderabad had to surrender his domain to the Government of India in 1948 at a bloody massacre of Hindus and Muslims that took place shortly after Indian independence. It is at this point that the seeds of communal sensitivity seem to have been sown. Muslims in large numbers migrated to Pakistan leaving their ancestral houses for fear of death and to find safety within their 'house of peace' since Hyderabad became a 'house of war'.

Here appeared a new phenomenon of animus attitude among the people of every religion towards others. The long cherished communal harmony has been replaced by communal violence and religious intolerance. Natives of the same locality live in suspicion of the neighbour. Mosques, Ashurkhanas, Temples and Gurudwaras became targets for attackers. Religious festivals could only be observed under heavy police protection. One lived constantly with anxiety and fear over loss of life and property. Ironically, communal violence was always ignited at Darussalam – an important centre of the old city - before it spread to other parts of the city.

1.5 Communal Violence

The factors that contribute to the communal violence in the city of Hyderabad over the past two decades should be considered. Some of the major elements that perpetuate societal distrust and promote hatred are brought out here in the subsequent lines.

'Making the whole world Aryan' is the mission mandate of the Brahmanical Hinduism based on its scripture 'Rig Veda' (9: 63, 5), the missionary attitude of Hindus is still perpetuated amidst all changes in the world order. They confront people of non-aryan backgrounds and the mission becomes influencing non-aryans "by Aryan customs and beliefs and absorbing into the caste infrastructure" (Howell 2000, 408).

"Hindu Missionary Organization" like the Ramakrishna Mission, the Arya Samaj, the Rashtriya Swayam Sevak Sangh and the Vishva Hindu Parishad are actively engaged in the work to convert the (adivasis) Tribal and the scheduled caste people. The conversion is not aimed at a change or betterment in their social or economic status. It is an exercise towards political gain for Hindus by way of numerical strength (Howell 2000, 410). In the process of such exercises what is witnessed is religious intolerance and violence among the hitherto peaceful communities.

On the other side, Dalits perceive that the "caste is the greatest obstacle in the way of their unity and progress." Their mission is to "eradicate caste and adopt a right code of conduct based on equality, compassion, loving kindness and justice," wherein lies their salvation (Howell 2000, 408). All these movements

work vigorously in the city of Hyderabad promoting suspicion, hatred and intolerance among the neighbours.

In the recent past, Sikhs have been projecting themselves as a missionary community in the old city of Hyderabad. Their community is influencing the local Dalit people, offering the desired equality and recognition in the community. It has to be noted that there have been clashes between the Muslims and Sikhs when the city witnessed communal violence in the past. The Gurudwara located at Gowliguda of the old city was targeted by the rioters and the Sikhs holding swords stood guarding it in one of the communal clashes in the eighties.

The subsequent development was one that separated people from their neighbours, a kind of ethnic cleansing whereby localities are meant for certain religious people and others had to leave for 'theirs'. Thus Muslims are making their localities purely Muslim, Hindus making theirs for only Hindus and Sikhs making theirs exclusively for Sikhs. Many families have left their ancestral homes or localities where they grew up selling their properties and move of to new areas. The trend is becoming stronger despite the effort of the government establishing communities for mixed people groups. It is almost impossible for the people of other communities to live in such localities.

It is due to lack of sufficient scriptural knowledge of their religion and a blind religious fanaticism people have grown intolerant. "Muslim fundamentalists have very narrow interpretation of their religious precepts and try to enforce it on others" (David 2001). "When a particular brand of faith is the faith of an ethnic group which has to live close to another ethnic group adhering to another brand of faith, then religious fundamentalism spills over into communalism.... Communalism is a phenomenon of hate posture of a particular faith community against all other faith communities" (Carr 2001).

1.6 Importance of the study

The post modern era that claims to have brought the humankind together as a global village on account of the information technology and the scientific advancement has failed to re-establish the communal harmony. Despite the fact that the Cyber City, the hub of information technology is located in one part of

the Old City with multiplicity of people groups, the Muslim Community's Darussalam remains an unseen reality. In the process of building dar-ul-salam discounting the neighbourhood as dar-ul-harb is causing untold miseries to the innocent people.

It is a matter of grave concern not only for the Governments and non - Muslims but also for a vast majority of peace loving practicing Muslims. Therefore it is attempted to study the various interpretations on the Qur`anic provisions for holy war (Jihad) as stated by the various Muslim scholars and schools of law especially those pertaining to Hyderabad context.

The Qur`anic law rules the Muslim way of life. The knowledge and understanding of that law makes all the difference in the life of a Muslim. Islamic jurisprudence and its application in the contemporary society towards communal harmony and healthy human relation must be understood.

This study is to understand:

- 1 As to what extent Muslim Community is able to substantiate their claims of the knowledge of Qur`an
- 2 What are the causes or reasons shown for the religious unrest and militancy
- 3 What are the interpretations to the concept of Jihad and whether or not they are in conformity with the Qur`an
- 4 To what extent the Muslim Umma stands together in their struggle
- 5 What Islam has to say about peaceful co-existence with people of other faiths in the postmodern era and
- 6 To what extent Christian - Muslim relations could play a vital role in the peaceful co-existence.

1.7 Methodology

The study has adopted literature studies using secondary sources. Required information and data for the study have been collected mainly from books authored mostly by Christian and Muslim authors, published works of Muslim and Christian scholars in books edited singly or jointly. Other sources of information for the study include published official data, survey reports,

memoirs, personal documents, documents pertaining to historic events and unpublished documents.

Where it was necessary, field work method has been adopted to elicit individual opinion or conviction regarding specific ideology. Questions were posed to different sections of the Hyderabad Muslim community to extract information relating to sectarian perspectives on issues affecting their common religious understanding. Accordingly some Muslim intellectuals, holding positions of importance have been interviewed. Some Muslim Lawyers gave their opinions and interpretations on the subject.

Some Religious leaders who are held in high esteem by their people were interviewed. A few Sufi Mystics shared their views and convictions on the subject. They were visited at their places where large number of common people belonging to different religions assemble with their personal prayer requests. Some of the Muslim followers of such Sufis were also interviewed. Besides, opinions of some common people who are engaged in different trades and business on a daily basis were obtained.

The statements of the said persons point to varieties of convictions, understandings, teachings and societal rules that govern their adherence to set principles. The study has tried to understand Islamic jurisprudence – the ways of interpreting the Qur`anic law – for the benefit of the faithful. The following chapter looks at the Islamic jurisprudence, its theories, its relationship to the secular law of India and the problems in the application of the law in the changing situations.

CHAPTER II

REVIEW OF EARLIER STUDIES

The problem of failing communal harmony has been a subject studied by many scholars world over. Reasons attributed differ from place to place and context to context. However one thing common among all conflicts is the basic understanding and interpretation of the convictions of faith. Not much of study has been done in terms of jurisprudence as a cause of conflict particularly relating to Hyderabad. There is of course a growing awareness that the conflict can be attributed to ignorance of common man of the community in matters relating to his faith.

Where the Scriptures are not taught with adequate interpretation the community of the faithful tend to remain ignorant in any religion. The Scriptures, whether the *Tanakh* of Judaism or Qur`an of Islam or the Bible of Christianity or the *Grandh Saheb* of Sikhism or even the Vedas of Hinduism, remain beyond the understanding of ordinary people. Those who understand are a small minority in any religion whereas the vast majority of the faithful lack knowledge of the truth of their religion. In other words the theology of a particular religion stays with the learned theologians and do not reach the common man. Ignorance of the scripture makes a person self-righteous and that causes alienation from the rest of the society. If the scriptures are not interpreted to the context and to the times, they could become redundant in the changing world scenario. Every religion and its scholars believe that its scripture contains messages and guidance relevant to the time and situation. So also Qur`an, being the word of God for Muslims, its interpretation to suit situations is a matter of dispute among the scholars.

Unlike the Bible, Qur`an has never been subjected to critical analysis of any kind. While its translation itself is unacceptable for majority of Muslims, Qur`an in any language other than Arabic is not considered true Qur`an. Hence the titles 'The Meaning of the Glorious Qur`an', 'Translation of the Qur`an' are given for the Qur`an in languages other than Arabic.

2.1 Problem of ambiguities

This chapter looks at the various earlier studies on the problem of Qur`anic interpretations, the ambiguities therein, the traditionalist's perspectives, the liberal or secular way of interpretation and the different opinions on communal harmony. The changing world order has been phenomenal in every Indian city and Hyderabad is no exception. Its impact on socio – religious lives of the community is such that it required every people group be equipped to live with their varied religious convictions amidst a global multi religious community. In response to such a demand of the changing world order religious scholars, particularly Muslim scholars, made suggestions regarding changes expected in the Islamic jurisprudence with a view to facilitate communal harmony.

A number of scholars expresses in their writings the quest for a deeper understanding of the truth hidden in the Qur`an and Hadith which are primary sources of Islamic law. Yusuf Ali says, "The Qur`an - indeed every religious book – has to be read, not only with the tongue and voice and eyes, but with the best light our intellect can supply, and even more with the truest and purest light which our heart and conscience can give us." (Yusuf Ali 1983, iii)

According to Mamadou Dia of Senegal, as referred by Kenneth Cragg in his book, "The Pen and The Faith", the reader of Qur`an should be rational, reflective and self educative through the text that was read. The Islamic Theology thus is claimed to be proceeding from such an "appeal to reason, logic and mind". Similarly, the Islamic law, when defined and enlarged, must witness "Ijtihad and Qiyas" (Cragg 1988, 46). Mamadou Dia is open for interpretation according to the needs and situations thus benefiting the reader theologically. So also the Islamic law needs to be interpreted with a new definition for its provisions, if need be enlarged to address new challenges and issues.

While insisting that the Qur`anic revelation requires interpretive reasoning, Ibn Qutaybah suggests that the reasoning should be restricted so that "its conclusions do not contravene the accepted contents of the revelation itself" (Wheeler 1996, 81). Ibn Qutaybah expresses his fear over the interpretations whether the exercise would lead to contravention of accepted norms that have been followed for years. This is a common fear among many scholars who would not be in a position to guide the community in a given situation.

Subhi Mahmasani of University of Lyons and who served as a Magistrate in his article, "Adaptation of Islamic Jurisprudence to Modern social needs" states, "In fact, the closure of ijtiḥad violates the provisions and concepts of Islamic jurisprudence and condemns all Muslims to permanent stagnation and exclusion from the application of the laws of evolution. It imposes upon them to maintain the same conditions prevailing at the time of ancient jurists, and to follow the pattern they had set for themselves and for the Muslims of their days and the days that will follow until eternity" (Mahmasani 1982, 182). Further he emphasizes, "...The door of ijtiḥad should be thrown wide open for anyone juristically qualified. The error, all the error, lies in blind imitation and restraint of thought. What is right is to allow freedom of interpretation of Islamic jurisprudence, and to liberate thought and make it capable of true scientific creativeness" (Mahmasani 1982, 182).

Citing a tradition Mahmasani quotes Muhammad as having said: "I am only a human being: If I order you to do something regarding your religion you must comply. But if I order you to do something on the basis of my opinion, well I am just a human being. You know better in matters concerning your worldly affairs" (Mahmasani 1982, 186). The Hadith gives the freedom to decide in matters affecting worldly affairs. If Muhammad himself has given that freedom to his followers, Islamic law must be made relevant to the changes of the world order.

2.2 Islamic Faith and Law

Only by enforcement of Shari`a "in its entirety and rigour" the society would become truly just is a strong notion prevalent among the orthodox Muslim community. It is believed that the principles and values of the Shari`a

have eternal validity. While accepting this there are others who hold that the Shari`a was given in particular circumstances and the enforcement of which in the 7th Century should not be the way it is implemented in the 21st Century (Nazir Ali 1987, 139,140).

Asaf A.A. Fyzee analyses the difficulty of Islam in terms of Shari`a, which embraces both law and religion. In his article, "The Reinterpretation of Islam" he points to two dimensions of the law. The rule of law, that is enforced by the state and the rule of conscience, which is entirely a man's own affair. While religion is based on spiritual experience, law is "based on the will of the community as expressed by its legislature or any other law making authority." As he calls it a 'duality', Fyzee sees in Shari`at "two forces pulling each other constantly on the other direction" (Fyzee 1982 188, 189). He has really applied the truth of the matter to the reality. It is the struggle between the sacred and the secular. Both need to be defined within their respective parameters and maintained accordingly. With the conviction that "the law by nature is subject to change and the heart of religion, the belief in God is unchangeable," Fyzee suggests, "If two such divergent forces are made to live together, there will be a clash. ...My solution is (a) to define religion and law in terms of twentieth century thought, (b) to distinguish between religion and law in Islam, and (c) to interpret Islam on this basis and give a fresh meaning to the faith of Islam" (Fyzee 1982, 189,190). According to Fyzee, law and religion must be defined, distinguished and interpreted. The common man also should be able to understand the definition of his faith and the difference between his faith and the law that he had to abide by. Interpretation of both in every generation according to the changes must be made known meaningfully.

Katherine P. Ewing pointing at the concept of Kafir (infidel) as an example shows that Kafirs are those outside Muslim community and whose social relations are not governed by Shari`a. She argues in her book, *Shari`a and Ambiguity in South Asian Islam* that Shari`a was articulated and defined at a particular time and place where the term Kafir was used to designate non-Muslims. But over the centuries, it is also used to criticize even Muslims of different opinion, members of different sects and individuals who violate Muslim law (Ewing 1988, 2). This is evidence of attempts made to give new

definitions. Such definitions have been with wrong motives and not with fair mind and thus resulting in sectarian clashes and divided communities.

Looking at the plight of the Muslim community at large Fyzee echoes his voice of concern: "...that Muslims, even where they constitute the majority in a country, are often economically poor, educationally backward, spiritually bankrupt and insist on 'safeguards'; that the beneficial laws of early Islam have in many instances fallen behind the times; and that the futile attempt to plant an Islamic theocracy in any modern state or fashion life after the pattern of early Islam is doomed to failure... Islam must be reinterpreted, or else its traditional form may be lost beyond retrieve" (Fyzee 1982, 193). The concern expressed by Fyzee is indeed valid that the Muslim community would continue to remain backward as long as the Qur`anic message is not communicated to them for application in the contemporary situation.

2.3 Struggle for Islamic Identity

In his article, "Islam in Secular India" Mushir UI-Haq of Jamia Millia University expresses, "Islamic law is believed by generality of Muslims to be the Islamic way of life, comprehending beliefs, rituals, practices, public and personal law, and being stretched even to include dress, personal appearance and rules of behaviour in social intercourse" (Mushir 1982, 175,176). Here is another issue raised by Mushir whose understanding of Islamic law is inclusive of the whole of social, cultural and religious life. It is an advocacy for a distinctive identity of the community. A similar plea is made by many scholars for such an identity and they seek to establish a law of Islam. But it should be noted that there are other Muslim scholars who are enlightened by the message of the Qur`an trying to give new meaning to the issue. They look at the religion and the state differently.

Hasan Askari is quoted as having said that the "Prophet of Islam did not create a state" and "that Islam can survive without political power, without statehood" (Cragg 1988, 118). He is emphatic in his statement that the faith community would sustain itself even without a protection under law and governance of the secular state.

It is the common perception in the Islamic context that the Muslims are making tremendous efforts in enforcing the law of Islam (Shari`at) in the society. It is with a view to establish 'God's just reign' in the Islamic community of faith.

According to Michael Nazir Ali, there is a sense of “frustration with the enforcement of Shari`a and increasing awareness of the failure to observe the law” (Nazir Ali 1987, 79). He feels that there is a pungent desire for God’s reign through Shari`a and equally an awareness of the failure to keep the law. The inarticulate provisions of the Qur`an should be interpreted to make people understand what ‘God’s just reign’ means. If not, it would appear as if the just God who wants to reign supreme depends on His believers to make room for His kingdom using the Shari`a.

2.4 Views of the Mystics

An Indian poet and a Sufi, Allama Muhammad Iqbal reflects a philosophy of pluralism in his interpretation of classical Islamic doctrine. While maintaining conservatism, Iqbal shows an open attitude towards people of other faiths (Nazir Ali 1987, 58).

“Sufi tradition regarded the existence of other religions as within the providence of God and as part of his purpose” (Nazir Ali 1987, 53). Iqbal has included Buddha and Zoroaster among the Prophets. The Qur`an advocates, while acknowledging *Ahl-Al-Kitab*, the people of the Book initially meant the Jews and the Christians, to have cordial relationship with Muslims. Later, Islam included Zoroastrians in the list of the people of the Book because Zoroastrians formed a significant part of the community in the Islamic Empire. Modern Muslims extended the title *Ahl-Al-Kitab* to all Monotheists too (Nazir Ali 1987, 54). It is said to be an innovative reinterpretation of the Qur`an.

2.5 Modernists’ point of view

Abid Husain in his article, “Indian Muslims in a Secular State” opines that Islamic teachings are “in harmony with the fundamental urges of human nature and can stand the test of reason, observation and experience” and that it should not be difficult “to express the need for the desired reforms in secular terms and to prove it by rational arguments.” He further insists that ‘both scientific and political secularism should be acceptable to Indian Muslims and that they should support it actively and jealously rather than tolerating it in a passive way’ (Husain 1982, 170,171). Abid Husain calls for a realistic approach in terms of religious as well as social fabric of Muslim community, and he recommends

reforms that would enable Muslims to become active participants in the societal development.

2.6 Plurality and Islam

Advocating Muslim participation in evolving a common Hindustani culture, Abid Husain suggests that such endeavour "should not displace regional and communal cultures but coexist with them and serve as a common sphere of life for all" (Husain 1982, 173,174). This has been the salient feature of the Hyderabad Muslim community that has been living side by side with the Hindu native culture and the Muslim culture brought by Mughal rulers.

Indian pluralism is not a matter rejected by Maulana Abu-I-Kalam Azad despite all his dedication to Islamic piety and having drawn his quality of leadership from the Qur`an (Cragg 1988, 31). Commenting on the works of Azad, "Tarjuman Al – Qur`an" Kenneth Cragg observes, "But with a long Mughal tradition in his veins, and his natal links with Mecca itself, Azad could envisage an Islam not of sectarian belligerence but of confident partnership in a cultural and spiritual diversity where a strident divisiveness would be its betrayal" (Cragg 1988, 29).

The distinction of Hyderabad Muslim socio-cultural situation underwent a thorough shakeup on account of the partition of India and Pakistan. The peace between the hitherto friendly neighbours of other religions gradually vanished. Looking at the situation Kenneth Cragg says, "The creation of the state of Pakistan symbolized the forfeiture, for them, of that shape of Islamic destiny and threw them back, with aggravated finality, on Muslim-Hindu co-existence" (Cragg 1988, 110). "The Muslim community within India, since partition, has hardly begun to face the question of the social implication of its monotheism" (Cragg 1988, 117).

Cragg quotes Hasan Askari of Osmania University of Hyderabad from his book, "Inter - Religion" saying, "For a religion to remain a religion it should be inter-religious" (Cragg 1988, 109). "True theology and right worship must always be concerned for, and involved with, the search for a true and right society" (Cragg 1988, 117). According to Askari, religious diversity is mystically one and that mysticism evades the challenge of communal relationship between religious

faiths. God, as he claims, has fashioned man for the natural religion (*Din Allah*), which is the culmination of the basic unity of revelation and with capability of being consistent with diversity. In the emotive cultural dimensions of faith systems “each has to recognize the vocation to interrelationship, pursuit of which must itself generate the solutions, intellectual and spiritual, which it requires”. He also admits that the Muslim mind is “consistently prepossessed by the first anti-idolatrous preoccupation of Muhammad” (Cragg 1988, 123).

The aggravated anti-idolatrous spirit of Muslims and unprecedented promotion of idolatry of Hindus became the cause for clash soon after the partition of India and Pakistan. Subsequent communal disharmony is attributed to development of Temples at the doorstep of Mosques on one side, Dargahs or Muslim shrines very close to the Temples on the other side. This common phenomenon has become a cause for political rivalry and the religious centers often became igniting points for communal clashes within the city of Hyderabad.

The review of earlier studies, on the issue of whether or not to interpret the Qur`anic law promoting peaceful coexistence of Islamic community with the multi religious society of the globalized world, reveals that the scholars differ in every aspect. The crux of the matter relating to Hyderabad remains an issue, for the communal disharmony and societal unrest continue to hamper common life of the city dwellers. Interpretation of scriptures alone could communicate religious values to the masses that suffer the consequences of conflicts.

CHAPTER III

ISLAMIC JURISPRUDENCE

An attempt is made in this chapter to study Islamic Jurisprudence *per se*, as expressed by religious scholars of Islam. An overview of the interpretations and applications of the Islamic law is taken to see effects of changing world order on the Muslim community in terms of their traditional understanding of their laws and the way interpretations are made to give new meaning to the old scriptural provisions. The implications of such interpretations and the ambiguities therein are also considered. The different schools of law, their way of interpreting the Shari`a, its application in common life and their relevance for the postmodern society are considered in the following paragraphs.

3.1 Foundations of Muslim law

Muslim law is divided into two categories viz. 'the roots of the law' (*usul Al-fiqh*) and 'the branches of the law' (*furu`Al-fiqh*). The first category comprises of the Qur`an, Hadith (traditions), Qiyas (analogical reasoning) and the Ijma (consensus). The second category deals with the application of the law in particular cases and situations. The doctors of the law (*`ulama*) reached a consensus regarding the finality of the four schools of law whose jurists codified the Islamic jurisprudence. The interpretation and application of the codified law has been generally accepted as final in all legal matters concerning Muslim community (Nazir Ali 1983, 50).

The science of jurisprudence commonly called 'Fiqh' "implies the exercise of reasoning in deciding a point of law in the absence of a binding command from the Qur`an..." (Ahmad 1995,10). According to Aquil Ahmad the spirit of the law in Islam is religious as well as ethical. The content of the law is partly based on customary laws of the pre-Islamic period, though inspired by the Qur`an and the teachings of Muhammad. Muhammad never created a system of law, but used the existing traditions and modified them to suit the occasion.

3.2 Place of Islamic Law in the Secular Indian Law

God was the supreme legislative power to enact laws and there is no legislative power in the State according to Islamic system. The British Government recognized this view, as any attempt to modify their law was considered an invasion on their religion. However, later there were legislative modifications to the application of Muslim law.

According to Rule 32 of Indian Mohammedan Law "The court, while applying Mohammedan Law, should not attempt to put its own construction on text of the Koran in opposition to the express ruling of commentators of great antiquity and high authority." Giving great value to the authority of Fatwa the Law suggests that the court should see how a text has been interpreted, whether or not by recognized Muslim commentators and Jurists (Purohit 1998, 96).

As per Rule 33 "The ancient texts and the Sunnah of the Prophet should not be taken literally for deducting new rules, especially when such deducing rules do not conduce to substantial Justice." Further, Rule 36 says, "Arabic words should be understood in their primitive meanings."

"The spirit of the law should be kept in view and the principles underlying it should be followed sincerely" when the Arabic words of the ancient texts are to be interpreted (Purohit 1998, 98).

3.3 Principles and Application of Interpretation

Use of opinion is permitted as a method of interpretation, but, it should be "regulated and controlled by specific rules so as to ensure that the conclusions arrived at were not at variance with basic principles of Islamic law" (Amini 1986, 37). The opinion must have been drawn from the Qur`an or the Traditions through reasoning; the opinion must be based on analogy drawn from identical precedents; and the opinion should be based on general principle of law (Amini 1986, 37).

Such expository interpretation or deductive interpretation or expediential interpretation helps in deduction of legally operative rules from the Qur`anic texts. This regulates various spheres of human action through divine law (Amini 1986, 46). Changes in the rules and regulations, according to Amini, are "to ensure the attainment of the purposes prescribed by Fundamental Universal

principles found in the Qur`an." "Such changed rules remain operative only till such expediency or policy considerations continue to exist. As soon as they no more exist the old rules are revived" (Amini 1986, 47). The question then is to what extent are the fundamental universal principles known to those who intend to live according to the Qur`anic law.

Amini identifies three different sets of circumstances where rules and regulations derived through interpretations might be used legitimately and they are:

"1. Those new problems or legal issues which arose out of rapid cultural expansion, multiplicity of conquests, growth of scholarship and development of formal education."

"2. Those problems or legal issues, which were covered by preexisting Operative Orders derived by means of interpretation. But because of the changed circumstances and conditions of life the subject of such rules was being defeated or an observance thereof produced extraordinary hardships. In such cases a revision was considered necessary to meet these exigencies of time and place."

"3. Those problems or legal issues which were covered by rules found in the text but because of expediency the companions had determined the application thereof to particular situations or occasions. Some such rules based on expediential interpretation needed revision..." (Amini 1986, 48, 49).

All the three are contemporary circumstances requiring the use of rules and regulations derived through interpretation. Cultural expansion and growth of scholarship are the marks of the changing world order. Although multiplicity of conquests is uncommon from Islamic point of view, cultural multiplicity is inherent within Muslim community especially in Hyderabad.

3.4 Necessity of Innovative Applications

Revision of rules has become necessary due to changed circumstances and the resultant hardships faced by Muslim community. For example, there was a general rule in many parts of the old city that forbade multistoried buildings in a residential area to maintain purdah system. It was feared that from the upper floors men could peep into the neighbour's house and specially at women. Even if someone wants to build first floor, there should be no windows in that. The present situation is that the land value has gone up so high, the need for space

increased, and that people have money to build, rule has to change in order to facilitate attractive multistoried income fetching buildings with sufficient and attractive windows and doors. The privacy of the neighbour is his look out.

According to Maulana Muhammad Shabbir Ahmad `Usmani, the Qur`anic verses were handed down on different occasions and rules of a limited duration were prescribed as per changes of circumstances. Citing an example he says that in the early years of Islam slaying or fighting (the enemies) was prohibited and later it was permitted. Likewise, in the beginning it was ruled that for forgiveness one must pray the whole night or for half of it or a little less than half. But later it was held, "God is well aware that you cannot fulfill this (order) therefore, you are now forgiven and recite Qur`an to the extent you can easily recite" (Amini 1986, 201, 202).

3.5 Judicial Schools and their interpretations

The Islamic schools of law emerged out of meetings of scholars in groups where they arrived at a local consensus. The out standing scholar would gain following in different localities. Thus emerged scholars like Al-Shafi`i, who is considered the father of Islamic Jurisprudence, and contemporaries like Ahmad ibn Hanbal, a traditionalist. Abu Hanifa, and Maliki`i had become scholars whose following led to the recognition of the Sunni schools of law besides the former two. Ithna –Ashari and Imami Shii are recognized Shiite schools of Law. It is here attempted to study their principles of interpretation in relation to ambiguous provisions of Qur`anic Law and unforeseen situations that warrant interpretation of the Qur`an. All these schools have accepted Qur`an, Sunnah, Consensus and Analogy as the basic sources. They differ in matters relating to the Traditions they accept as authentic source.

3.6 Interpretation of Shafi`i School of law

Shafi`i school's legal theoretical concept is '*bayan*' meaning a 'statement of legal rule'. It is held that such legal rules are expressed in revealed texts of the Qur`an or Qur`an and Sunnah together. The legal rule is that whether it is Qur`an or Sunnah or for that matter, their interpretation they express the divine law. The concept of *bayan* upholds the view that the "divine law is all-encompassing" (Lawrey 2002, 47).

According to Nazir Ali, Shāfi`i School developed a principle of *istishab* that keeps the law valid for a certain situation and until that situation is not changed. There is a provision for the “exercise of subjective opinion when there is a situational change” (Nazir Ali 1983, 50). For example, as per law every thing that is washed must be squeezed like a cloth; but when it is applied to a vessel that is to be washed, it should be cleansed without squeezing (Hughes 1988, 221). It is an accepted fact that the Qur`anic law should be held as valid for specific situations and when there is a change subjective opinion is allowed.

3.7 Interpretation of Hanafi School of Law

While recognizing the importance of Qur`an and Hadith, the Hanafite School emphasized the need for ‘analogical reasoning’ to get a legal opinion on matters that require interpretation. It was an innovation introduced by the Hanafite School “that a jurist may exercise his ra`y or personal opinion in determining how strictly a legal principle obtained through *qiyas* was to be applied. If he decided not to adhere to a strict interpretation of law, it would be because he did not think the contemporary situation suitable for such an interpretation” (Nazir Ali 1983, 48, 49). This shows that there is a provision for applying discretion of jurists in matters that need interpretation relevant to the context while making legal judgments. It is also clear that the Qur`anic law needs to be understood from the situation and time.

The Hanafite jurists are said to “have paid meticulous attention to the collection of traditions and have always insisted that legal discretion may only be exercised while keeping in mind the general well being of the Muslim Community (*Ummat*)” (Nazir Ali, 1983, 49).

It is held by scholars that the Hanafi theory is theological and legal tradition based on God’s communications (*Khitab*). It is built into the natural order of time and place. “The knowledge of what times and places have been instituted by God as occasions will have to be gleaned from textual sources” (Spectorsky 2002, 259).

The three recognized primary authorities of the Hanafi School of Sunni Law are Abu Hanifa and his two disciples by name Abu Yusuf and Imam Mohammed. According to Rule 39 of Mohammedan Law (i) “Where there is

difference of opinion between the two disciples and the founder, the opinion of the disciples prevails" (Purohit 1998, 98). (ii) "Where there is difference of opinion between Abu Hanifa and Imam Mohammed that opinion is to be preferred which coincides with the opinions of Abu Yusuf." (iii) "Where all the three hold different opinions, then the opinion of Abu Yusuf prevails." (iv) "But these rules are not inflexible, and in doubtful cases where there is no specific opinion to guide the court, the court ought to follow that opinion which is most in accordance with justice, equity and good conscience" (Purohit 1998, 99).

While applying Hanafi School of law, the latter opinions are preferred to the former ones giving scope for interpretive opinions relevant to the contemporary situations and problems. Application of discretion in legal judgments or *istihsan* is a recognized exercise in the Indian Islamic law. Accordingly where a specific opinion is not provided by the Hanafites, the Indian court of law follows that which is in accordance with justice, equity and good conscience.

3.8 Interpretation of Maliki School of law

Maliki legal drafting reflects the vital role of Medinan Imams in determining law. Jonathan Brock suggests that, "...by the end of the second Islamic century, legal authority resided in a clear conception of the prophetic story, but not yet in the Qur'an" (Brock 2002, 5). Maliki School gives the jurist right to set aside a judgment based on logical reasoning if such a judgment, in his opinion, is harmful and that there were other courses that would benefit the Muslim *Ummah* (Nazir Ali 1983, 49). Maliki School of law holds the principle of 'Public interest or general welfare' in terms of jurisprudence (Esposito 1988, 135). Where public interest or general welfare is the principle, the interpretation could be impartial and unbiased. It would be relevant at all times and in all situations.

3.9 Interpretation of Hanbali School of law

Hanbali School reflects traditionalist – jurists who integrated tradition into their jurisprudence. For them *qiyas* is associated with human reasoning. Discovering the Sunnah of the prophet, relevant to the case and with human reasoning, is applied by Hanbal (Spectorsky 2002, 73, 74). Hanbali School is

against the exercise of any personal opinion and “advocated a strict adherence to the traditional sources of law” (Nazir Ali 1983, 50]. Although the emphasis is on the tradition of the Prophet, there is openness to the extent of application of human reasoning. It does not recommend a blind following in all matters. In other words, Hanafi school is for a logical interpretation of the provisions of the law to current situation in the light of the tradition of the Prophet.

3.10 Interpretation of Ithna - Ashari Law

In the interpretation of Ithna-Ashari Law, as per Rule 40, “Where there are two opinions as a point the court should accept only that opinion which is in accordance with Justice, equity and good conscience” (Purohit 1998, 100). Indian Courts have noted that there could be too many claims on the basis of the sectarian groups, given an opportunity to be heard. Where the opinions expressed are contrary to each other the decision making would be very difficult, for religious leaders would try to implement their personal opinions quoting traditions of their choice. Ithna–Ashari interpretation of law therefore has provided for accepting that opinion which is in accordance with justice, equity and good conscience.

3.11 Imami Shi`i

Imami Shi`i refutes *qiyas* and justifies their position against interpretation. They claim to have been led by the literal Qur`anic provisions. However, such a claim cannot discount the changes their community has witnessed over the years. The changing world order puts forth ever-increasing challenges for religious communities to address. It is noted, according to Gleave, there are instances of the use of analogical reasoning to give a ruling by Imami Shi`i (Gleave 2002, 271). It indicates that analogical reasoning is expected from any interpreter in order to deduce the meaning and application of the law.

3.12 Opinion of Schools of Law and Indian Courts

Indian Courts have shown extra care and accorded special considerations in terms of law relating to Muslim Community in India, may be on account of their former privileged position as belonging to the religion of rulers. Whilst as

religious minority they claim freedom to practice their religion and apply related religious laws in their communal life.

Hyderabad has always been special in terms of its community of Muslims for specific reasons. Over four hundred years old history of Hyderabad is known by the governance of Mughal rulers, whose capital was the city of Hyderabad. Muslims were lawmakers and they established the courts of law. Naturally the underlying factor beneath the system of law was Islamic. Other religious communities enjoyed the freedom to practice their religion and to be governed by their original cultural laws. There was no clash of any kind between them for none felt threatened by the other.

Independent India emerged to bring every people under one rule and law. Hyderabad was not part of that initially and after a bloody conflict, it has been subdued and taken over to become part of India subsequently. Indian constitution had to accommodate all such laws of religious groups and so Muslims were given the freedom to practice their hitherto existing rules. The situation of Hyderabad had rapid changes year after year with inflow of multiple people groups into the pockets of Muslim localities. Courts of law are to deal with complex cases of different people of various religious convictions. Judges are mostly non-Muslims who hardly have knowledge of the Qur`anic Law. They may not even understand the attachment of Muslim litigants about their point of view or opinion based on the Qur`an or Hadith.

The Indian Mohammedan Law is defined as "an uncodified law, which derives its sources from the Koran, Sunna, Ijma, Kiyas, Istihsan, Istislah, Istidlal, Fatwas, and customs" (Purohit 1998, vii). When there are no conflicting opinions on any point of Mohammedan Law, the court cannot reject the given opinion even though it is against the principles of justice, equity and good conscience.

In the famous Shah Bano's case (AIR 1985 SC 945) involving interpretation of Muslim personal law and the resultant implications, the Supreme Court of India held, "All this has been done just to escape from the inconvenience and confusion which may arise if every time new rules and meanings are suggested to the texts of the Koran and the Sunna" (Purohit 1998, 101). In the words of Sami Zubaida, "The judge rules in accordance with law codes, and not the books

of fight. His responsibility is to the state and the law, not to God and his conscience" (Zubaida 2003, 221).

However, Nazir Ali concludes in his statement the result of technical interpretations and opines, "Legalism ultimately results in injustice, for it fails to take note of circumstances and personalities. ...A truly just society must also be a humane society which is capable of showing mercy and forgiveness while at the same time it upholds the law" (Nazir Ali 1987, 139).

3.13 Ulama and Fatwas

In as much as the Mohammedan Law provides recognition for Fatwas in the Islamic jurisprudence it is necessary to study the role of Ulama who pronounce Fatwas. Peace or war mostly depends on the Fatwas promulgated to the faithful by the religious scholars or Muslim theologians. Such Fatwas could cause tension between people groups if their interpretations hint at exclusiveness or religious superiority. Arun Shourie looks at some specific Fatwas and their implications.

The Fatwas, pronounced time and again, have reiterated that the Kafirs or unbelievers were unclean and that Muslims should never have them friends or confidants (Shourie 1995, 199). There are interpretations by the Ulamas who relate the 'impurity' ascribed in the Qur'an to Hindu or Christian beliefs and not to their bodies (Shourie 1995, 200).

The Kafirs are considered untrustworthy by repeated Fatwas showing the reason that they do not know or adhere to the principles and norms of the one and only true faith and so their guidance, help and judgment are liable to be defective. Thus, it is presumed that to have a Kafir for guidance in any activity of mundane life would lead a Muslim astray (Shourie 1995, 208).

When a husband had deserted his wife, the marriage can be dissolved by approaching a Muslim Judge. But, if the dissolution is ordered by a non - Muslim Judge, it has to be redone by a Panchayat of Muslims and only then the woman would be free. The orders of such Panchayats of Muslims are struck down if non - Muslims had been members in it since non - Muslims are considered untrustworthy (Shourie 1995, 209).

Some scholars of Islam condemn insurance in itself as *jua*. But it is interpreted as permissible if the insurance company is fully owned by kafirs of the Dar ul harb and if the Muslim can reap profit or advantages from taking insurance from the same. Muftis consider Insurance as gambling, but there is no objection for the same if Muslims can gain advantage from it (Shourie 1995, 216).

3.14 The Concept of Jihad

The common understanding of Jihad is that it is a holy war fought in the cause of God and that it would earn merit for those who engage in it. In the understanding of an uneducated believer the cause of God is to protect a *masjid* or a *dargah* from the attack of infidels. Even Government personnel, when involved in any such act against a mosque or *dargha*, needs to be dealt with as an infidel. Young men are prepared and motivated to be involved in that sort of jihad. Where there is no logical definition given, the believers get emotionally prompted to do anything even at the cost of their own lives. The damage suffered by them and others are seldom taken in to account because of a blind faith.

According to *Hadith*, whatever be the wrong done by a Muslim, when he kills an unbeliever, he is guaranteed to be saved from hell. Sunan Abu Dawud is quoted as said that a person who killed an infidel while fighting in jihad his sins would be forgiven and would enter paradise and that the unbeliever, who was killed inevitably go to hell. The justification here given is that the Muslim who killed and the infidel would not be brought to hell together (Shourie 1995, 578). This could be the understanding of many uneducated people of the old city of Hyderabad where religious convictions are very strong and their emotions are exploited by vested interests. In the light of the recent bomb blast in the Mecca Masjid, it needs to be understood as to who killed who and for what? The bomb is said to have been planted by a Muslim group by name *Harkat-ul-Jihad-al-Islami* (Hitavada 21. 5. 2007, 1]. Victims were innocent worshippers of Allah fully engaged in the Friday namaz.

3.15 Views of Commoners on Jihad

It is worth mentioning some of the opinions expressed by common practicing Muslims. Dr. Eunose a medical practitioner of the old city opines that

mere appearance with beard and cap will not make a person Jihadi. To involve in the sacred act of jihad one must be known for his outstanding practice of religion. He should attend the *namaz* at least twice a day – particularly the morning and evening prayers regularly. What others indulge in is not more than street fight retaliating with vengeance for personal reasons. There is no merit in such acts as that of a holy war.

Shaik Ikram Uddin, a Sufi claims that jihad is a struggle against the evil of the society. The almighty God is the defender of Islam and He does not rely on man to use force on others in order to defend His cause. God is able to protect His people. Our fight is against the spirits of the world that harm people. Mohammad Muinuddin Shaw Qadri, another sufi emphasizes the same view as that of Shaik Ikram Uddin.

Mr. Saiyed Saheb an official in the Central Government expresses concern for the backwardness of majority of Muslims and he blames it on the frequent communal riots. He feels that it is because of lack of awareness among his people. Narrating his woes at the 1991 riots he said that he could get shelter for him with his wife and children in the house of a Hindu friend of his.

Mrs. Shamshad Begum, Professor in a College of Nursing says that it is safe to live where Christians live and not in the Muslim locality. Her reason for the statement being that there is lot of disparity between locals and non locals even among the Muslim community. She feels that the spirit of fight would do more harm than good where every one is put up with different people to work together.

Mr. H. K. Khan, a business man from Wahhabi affiliation says that people must live at peace with others. No community could survive in the world singly. People of all communities together can make the world a pleasant place to live.

Nazir Ali suggests, "An experience of 'grace' in this context may lead us to understand this greater law of love which is a negation of mere retribution, restriction and reduction and is an affirmation of reformation, rehabilitation and reconstruction." In our concern for a new world order, we have to affirm with those of other traditions our common desire for justice and peace (Nazir Ali 1987, 79).

With repeated emphasis on the use of force as a religious duty and whose resultant suffering and harm on one's neighbour, there is an urge in the right thinking scholars. Human approach to religious duties is considered in many quarters of Muslim community. While studying the interpretation of the scripture it is necessary to compare it with the biblical hermeneutics. The critical and scientific analysis of the Bible over 200 years has exposed the brilliance of the word of God of the Bible. If the law of the Bible stood the test of critics its hermeneutic principles should be comparable with the interpretation of the Qur`an. In the next chapter therefore a comparative study is done between Qur`anic and Biblical passages and their interpretations regarding war and peace making.

CHAPTER IV

COMPARISON OF THE OLD TESTAMENT WITH QUR`AN

This chapter deals with the concept of war and peace both as in the Old Testament and the Qur`an. There is a need for the understanding of the terms 'war' and 'peace' from Christian as well as Muslim perspectives. The definition of the concepts largely depends on the interpretation of the respective scriptures. Herein is an attempt to study the various scripture portions that are often quoted by the religious groups to justify their stand in terms of war or peace.

The word 'Jihad' is commonly understood by Muslims as a term used for 'holy war'. But the word war is not accepted by majority in its literal sense of causing blood shed, even though there have been interpretations by way of fatwas promulgated repeatedly in favour of the same. Similarly, different scholars of Judaism and Christianity have interpreted the Old Testament concept of holy war differently. They justify their interpretation by using scriptures. Hence the following verses of the Qur`an and the Bible are considered for the study.

4.1 Qur`anic Provisions on Jihad

The basis for Jihad claimed by Islam is Qur`an. It is therefore necessary to study the provisions of the Qur`an in the light of the historic, socio-cultural situations. If it is held that the Qur`an is the Word of God, it has to be understood as God's truth and obey it without any reservation or prejudice. Leaders who advocate jihad or give new meaning to jihad or who try to find interpretations relevant to the times base their argument on certain specific verses from the Qur`an. Those commonly referred verses are considered for discussion in this chapter.

In Surah IX: v. 5 it is said, "*But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, And lie in wait for them in every stratagem (of war); But if they repent, And establish regular*

prayers and practice regular charity, Then open the way for them: For god is Oft-forgiving, Most Merciful."

Interpreting the said verse, Commentator Yusuf Ali suggests that the forbidden months are 'the four months of grace' and that a 'state of war supervenes – between Faith and Unfaith' when "the other party shows no signs of desisting from their treacherous designs by right conduct". Where war is inevitable it must be carried out with vigour even if it involves, slaughter, capture, siege, ambush or any other stratagems. "But even then there is room for repentance and amendment on the part of the guilty party, and if that takes place, our duty is forgiveness and the establishment of peace" (Yusuf Ali 1983, 439).

The language of the verse resembles as that of literal war. But the message is that the pagans or unbelievers must be brought to repentance and submission to prayer and practice of religion. The clause 'to lie in wait' therefore could mean to wait for their response to the call to repentance.

Should the words be given literal meaning and acted upon all pagans or unbelievers would perish and the purpose of the 'word of God' would be defeated. If slaying is the beginning of mission the resultant end would be blood shed and destruction. There would be none to worship the Creator.

The forbidden months of grace period implies that there is room for grace in the mission of God who Himself is acknowledged as the most gracious and compassionate. Further the verse ends with the clause: "God is oft-forgiving, most merciful" thereby presenting a forgiving God who by His mercy extends His forgiveness to all limitlessly.

He whose nature is ever to have mercy and to forgive would never expect His servants to slay and destroy the pagans or unbelievers. Rather He would expect eagerly for everyone to repent. Then there is no place for the use of sword in the mission of God. In agreement to this Yusuf Ali comments, "We are not to bar the gate against repentant. On the contrary we must do all we can to make their way easy..." (Yusuf Ali 1983, 439). It could thus be understood that the concept of jihad is a struggle to enable the unbeliever to repent and submit to the Lordship of God.

Surah IX. v. 6 refers to giving protection to any one irrespective of the religious convictions: *“If one amongst the Pagans Ask thee for asylum, Grant it to him, So that he may hear the Word Of God,; and then escort him To where he can be secure. That is because they are Men without knowledge.”*

It is acknowledged here that there could be individuals who might be in a position requiring protection in a given situation. Even in such a situation wherein those who seek protection are among the enemies of Islam and actively fighting against Islam, they must be given full protection. “Full asylum is to be given to them, and opportunities provided for hearing the Word of God. If they accept the Word, they become Muslims and brethren, and no further question arises. If they do not see their way to accept Islam, they will require double protection: (1) from the Islamic forces openly fighting against their people, and (2) from their own people, as they detached themselves from them. Both kinds of protection should be ensured for them, and they should be safely escorted to a place where they can be safe. Such persons only err through ignorance, and there may be much good in them” (Yusuf Ali 1983, 440).

By this it is made clear that the Muslim community is duty bound for the safety of the pagans or unbelievers whether the latter accept Islam or not. Such protection or asylum is to be granted for two reasons: one being that the unbelievers may hear the Word of God and the other reason is that they are considered to be men without knowledge. There is a strong advocacy for sympathetic consideration of the ignorance of unbelievers. It is an expression of real concern for the ignorant people to make them hear the Word of God in the verse that talk about asylum to unbelievers.

Surah IX. v. 29 deals with tax levied to unbelievers: *Fight those who believe not in God nor the Last Day, nor hold that forbidden which hath been forbidden by God and His Apostle, nor acknowledge the Religion of Truth, (even if they are) of the People of the Book, until they pay the Jizya with willing submission, and feel themselves subdued.*

The word *Jizya* is translated as poll tax levied on unbelievers of a Muslim state who willingly live under the protection of Islam. That is to mean those who do not accept Islam but “tacitly willing to submit to its ideals being enforced in the Muslim State, saving only their personal liberty of conscience as regarded themselves” (Yusuf Ali 1983, 447).

Here the fight is against those who do not believe in God or His judgment or accept Islam until they pay tax by way of compensation. It is but natural to pay the dues where safety is assured. In this there is a clear indication of a mixed religious community peacefully dwelling under Muslim rule where non-Muslims need to enjoy the liberty of living under the protection of Islam. Though they submit themselves as aliens to the ideals enforced by the Muslim state, they are entitled to enjoy personal freedom of conscience.

The tax thus levied also varied in amount and it was considered symbolical. It is to be a "token of willing submission" in order to ensure "that those whose religion was tolerated would in turn not interfere with the preaching and progress of Islam" (Yusuf Ali 1983, 447).

There is again a humane consideration for taxpayers. The poor, females and children, slaves, monks and hermits were exempted from paying tax. Thus the able-bodied males of military age were taxed, as if it was a commutation for military service. This again affirms the possibility of a peaceful co-existence of a multi religious community under the predominance or rule of Islam. Qur`an provides room for people of different religious convictions and categories to live together in unity.

Surah IV. v. 76 reflects another dimension of fight: *Those who believe fight in the cause of God, and those who reject faith fight in the cause of evil : So fight ye against the friends of Satan: feeble indeed is the cunning of Satan.*

The fight here advocated is for the cause of God and against the cause of evil. Evil, cunning Satan and friends of Satan are to be fought against by believers in order to overcome the cunning of Satan. It is indeed a common struggle for every believer irrespective of one's religion. But this verse gives rise to the ambiguity in identifying friends of Satan. Any one who differs in convictions could be labeled as a friend of Satan. Those who do not believe in Islam cannot summarily be rejected as friends of Satan and that there is no indication to that effect in the verse.

Surah II. v. 214 indicates another struggle akin to the one that is talked about by writers of the New Testament: *Or do ye think that ye shall enter the Garden (of Bliss) without such (trials) as came to those who passed away before you? They encountered suffering and adversity, and were so shaken in spirit and even the*

apostle and those of faith who were with him cried: "When (will come) the help of God?" Ah! Verily, the help of God is (always) near!

This is a fight against the trials, suffering and adversity to the point of being shaken in spirit and to cry out for help. A vast majority of the Muslim community is deeply involved in this fight, even though they do not acknowledge it as jihad. This struggle is considered, according to the opening clause, the gateway to the Garden of bliss. The struggle of day-to-day life with the eyes fixed on life's destination shall go on in every part of the world. In the face of the challenges of life situations, and threats of materialism that shake one's faith a believer has to struggle to live up to the expectation of the Word of God. This is a common experience of many Muslims of Hyderabad.

4.2 Concept of War in the Holy Bible

The Old Testament understanding of war is not in any way different from that of Islam. Invasion, conquest, captures, slaughter and plunder are frequently used words in the Old Testament. They echo the bloody war waged by the people of God in the cause of God. It was justified by their mission of establishing 'one valid sanctuary' in order that the people of Israel would "avoid contamination by the paganism lurking in a multiplicity of local shrines" (Oxford Study Bible REB 1992, 181). The book of Deuteronomy, which is also called 'second law', has prescribed 'rules for warfare' (Oxford Study Bible REB 1992, 202).

In his book "The Problem of War in the Old Testament", Peter C. Craigie holds that "the Old Testament was influential to some extent in the formulation of the religious ideology of war in Islam." Further he has distinguished the Muslim war as 'defensive' and 'aggressive.' However he adds that it was initially in defence of faith and later there was a transition from defensive to an aggressive war though on a 'limited scale' to 'achieve certain ends' (Craigie 1986, 22, 23).

The following references to the holy war reflect the purpose and nature of 'holy war' in the Old Testament times. It is evident that the war had been fought in the cause of God and against idolatry. Yet the implications of such wars in the

society of mixed communities are of great concern for common people. It is opined that Muslims learned to adopt the concept of war from the Israelites.

1. *We captured all his towns at that time and put to death under solemn ban everyone in them, men, women, and dependants; we left no survivors (Deuteronomy 2: 34).*

2. *So the Lord our God also delivered King Og of Bashan into our hands, with all his people. We slaughtered them and left him no survivors (Deuteronomy 3: 3).*

The context of these statements is where people of Israel occupied the territories that were already in occupation by a greater population of non-Israelite. Their dwelling in the new land with people of other faiths was not that easy as they had already in confrontation with such situations. Defeat and annihilation of king Og of Bashan and his people were expected to be necessary exercises guaranteeing peaceful habitation in the new land. Hyderabad of post independence India experienced similar situation wherein migrants had to abandon their own habitations and flee the city for Pakistan. Many such abandoned houses were occupied by aliens.

The point to be noted in both verses referred above is that the “holy war” left no survivors. It is not just bloodshed and killing but an act of elimination of a people group from their own land. Their towns were captured and their belongings were destroyed or plundered as it is seen in other references. If the power of the One God had to be shown to others where are they to see or hear what the people of the One God proclaim?

3. *The Israelites took the Midianites’ women and dependants captive, and carried off all their herds, flocks and property. They set fire to all the towns in which they lived, and all their encampments. They collected the spoil and plunder, both man and beast, and brought it all – captives, plunder, and spoil – to Moses and Eleazar the priest and to the whole Israelite community at the camp in the low lands of Moab by the Jordan over against Jericho (Numbers 31 : 9-12).*

The reference to the war against Midian with “unhistorical” details represent Israelites as slaying every person in Median, burning their cities, without themselves suffering a single casualty. The purpose of this reference according to New commentary on Holy Scripture is said to emphasize “the need

of ceremonial cleanness and to set forth the method to be adopted in the distribution of booty taken in war." (Barlett 1928, 143).

Here the war turns into an act of plunder in full view of the various other people groups who were neighbours to the people of Israel. There arises the question of witnessing to the One God before the idle worshippers. The following reference gives rise to another question whether the message of God was misinterpreted, for it goes with another instruction, to spare the virgins when their people were captured:

4. But you may spare for yourselves every woman among them who has not had intercourse (Numbers 31: 18)

According to the International Bible Commentary, "To put to death all the male children would exterminate the tribes implicated, the females spared being merged in the conquering people" (Irwin 1928, 57) These references depict holy war as acts of eliminating a population entirely or partially, letting some people live; and indulging in capturing and plundering.

5. He said to them, 'The Lord the God of Israel has said: Arm yourselves, each of you, with his sword. Go through the camp from gate to gate and back again. Each of you kill brother, friend, neighbour. The Levites obeyed, and about three thousand of the people died that day. Moses said, 'you have been installed as priests to the Lord today, because you have turned each against his own son and his own brother and so have brought a blessing this day upon yourselves (Exodus 32: 27-29).

It was in the context of when Israel was found guilty of worshipping other gods, Moses ordered "the Levites, in God's name, to summarily execute the guilty, not sparing even their own kin. ...Having battled illegitimate worship, the Levites are made the ministers of illegitimate worship" (Jewish Study Bible 2004, 186) There is another face to this reference according to Brown, the ignoring of natural relationships was required from priests and such spirit was to be shown even in times of war (Brown 1928, 97). Use of sword in this reference was against the kith and kin and neighbour. Such killings of the Levites leaving three thousand dead qualified them to be priests of God that day. It is in the same note that the violence spreads with rioters involving in the act of killing as a service to God. But God has also warned the people about the consequences of the use of sword:

6. *The sword will make orphans in the streets, make widows in their homes; it will take toll of young men and girls, of babes in arms as well as of the aged* (Deuteronomy 32: 25).

The use of sword indicates the totality of slaughter. In the context of Hyderabad the common use of sword (talwar) is seen at the sectarian clashes. Communal clashes are initiated by the use of razor to stab people whose death spreads message of terror. The plight of innocent people in times of violence is portrayed in the verse referred here. Besides, God's concern is voiced in the face of such cruelties caused against the innocent. He is the God of all people whether they know Him or not.

7. *Yes, says the Lord, the captive will be taken even from the strong, and the spoil of the ruthless will be liberated; I shall contend with all who contend against you and deliver your children from them. I shall make your oppressors eat their own flesh, and they will be drunk with their own blood as if with wine, and all mankind will know that I the Lord am your Deliverer your Redeemer, the Mighty One of Jacob* (Isaiah 49:25,26).

What the Israelites understood from the seventh reference, as given in the Jewish Study Bible is that "Israel's conqueror must give Israel back to God, and Israel's redemption brings knowledge of the one God all humanity" (Jewish Study Bible 2004, 884). There is a different picture of the holy war here and God is seen as intervener. Captivity, oppression, liberation and vengeance are seen in general as deeds of God over all peoples. The mighty God of Israel is projected as Deliverer and Redeemer. There is a strong emphasis on the just living expected of all people irrespective of their faith. The following reference is a much clear evidence of the nature of the One God who is just and echoes His voice against injustice of any nation or people group. He condemns plunder of the past and corrupt acts of any kind as punishable by God Himself.

8. *As for one who is conceited, treacherous, and arrogant, still less will he reach his goal; his throat gapes as wide as Sheol and he is insatiable as Death, rounding up every nation, gathering in all peoples to himself. Surely with veiled taunts and insults they will all turn on him and say, 'woe betide the person who amasses wealth that is not his and enriches himself with goods taken in pledge!' will not your debtors suddenly start up? Will not those be roused who will shake you till you are empty? Will*

you not fall a victim to them? Because you yourself have plundered many nations, because of the bloodshed and violence you inflicted on cities and all their inhabitants over the earth, now the rest of the world will plunder you (Habakkuk 2: 5 - 8).

According to G.W Wade the depiction here is of the tyrant Chaldean king who amassed power at the expense of his neighbouring people and secured himself and his capital inaccessible to attack. But the message brought by Habakkuk in the reference makes it clear "that the presumptuous will not experience God's favour, but will collapse." "The debtors of the usurer will force him to disgorge his gains" (Wade 1928, 596). Bloodshed and violence are condemned as acts that would attract vengeance and retaliation. The just God Himself would fulfill the retaliation irrespective of the faith of the concerned people group. Here is His question asserting Himself as the LORD of the Nations.

The prophecies against the nations by the Minor Prophets have expressed concern over the actions of the nations towards their neighbours and their faith practices. No crime, whatsoever be the cause, goes unnoticed and all concerned would be called to account for their deeds. God has revealed through these prophets that the Creator takes upon Himself the well being of all humans and their right for justice. Violations of human rights and willful denial of justice are subjects within the jurisdiction of God's administration and while dealing with them He maintains equality.

There are no favorites in the sight of God in terms of failure of administering justice. So also there is none insignificant whose justice can be denied or cause overlooked. Religious fanatics, greedy, self-righteous and spiritually proud people tend to become arrogant and grow insensitive to the hurts they inflict on others. Prophet Amos warned the people of His day that all their crimes are punishable and none could escape being condemned: *These are the words of the Lord: For crime after crime of the Ammonites, I shall grant them no reprieve, because in their greed for land they ripped open the pregnant women in Gilead (Amos 1: 13).*

Ammonites and Israelites were enemies for long. Israelites invaded the territories that were already under occupation of Ammonites. Later, Ammonites by supporting Assyrians who invaded Israel regained some part of their former

territory. Ammonites were condemned by Prophet Amos for their atrocity involving the act of rip opening pregnant women. Such acts are “no novelty in Semitic warfare,” (Ratcliff 1928, 572) they attracted consequential punishment with severity. Hyderabad has witnessed sectarian clashes, communal riots, ethnic violence and group fighting that developed into arson, looting and innocent killing. The agitation demanding separate Telengana State turned into polarization of people of on the basis of their regions affecting societal peace. Loss of lives and properties suffered in that agitation haunts the memories of Hyderabadis even to this day. Wicked actions of such kind are always manifestations of human emotions and not out of spiritual submission to God. Hence they are crimes and deserve to be punished.

Considering wars of the Old Testament as ‘religious war’ it is necessary to study its reality and relevance. George Mathew Nalunnakkal holds that the concept of ‘holy war’ does not correspond with the contemporary understanding of ‘jihad.’ He claims that war in the Old Testament was a “miracle” rather than a well-designed political mechanism with professionally trained soldiers. This is evident in the several occasions of conflict when Israelites believed that their war was a sacred activity in which God also participated (Nalunnakkal 2003, 6).

To illustrate this point the Aramaean invasion into Israel is quoted here from the Book of Kings. When the Aramaeans waged a war against Israel and sent a strong force of horses and chariots to seize Elisha, the prophet and advisor to the king. By the prayer of Elisha the Aramaean forces were blind struck and were caught up right inside their enemy’s camp. “When the king of Israel saw them, he said to Elisha, ‘My father, am I to destroy them?’ ‘No, you must not do that,’ he answered. ‘...As for these men, provide them with food and water, and let them eat and drink and go back to their master.’ So he prepared a great feast for them; they ate and drank and then were sent back to their master. From that time Aramaean raids on Israel ceased” (2Kings 6: 8 - 23). It is not only the divine participation that is evident in the situation but a miracle of peaceful solution for their conflict was found.

God won victory as recorded repeatedly in the Old Testament not with sword and spear but with insignificant people and tools like David and the single pebble from his sling shot (1 Samuel 17 : 47). As Zechariah records,

“Not by might, nor by power, but by my spirit, says the Lord of hosts (Zechariah 4: 6). The capture of Jericho is an example of such act of God. Joshua and his men marched silently around the walled city. On the seventh day the procession moved around seven times. The Priests blew “the seven trumpets of ram’s horns while the people raised a great shout and the wall collapsed and they could enter the city.” Archaeological discoveries reveal, “the city was destroyed by a great conflagration apparently assisted by an earthquake.” It is further disclosed that the fall of wall of the four or five acre city of Jericho was surrounded by a double wall and whose collapse was not due to the trumpet blasts or shouts of people but by God’s power at work in the natural world (Swain 1982, 24).

However it is admitted in the Old Testament that Yahweh is a God of justice and He would not tolerate or condone injustice and violence. “Hence, Yahweh took the side of oppressed Israel when they were under the yoke of Pharaoh. Yahweh also demanded a similar approach from Israel towards the fragile and vulnerable” (Nalunnakkal 2003, 6). It is said in Exodus 23: 9, “You shall not oppress a resident alien; you know the heart of an alien; for you were aliens in the land of Egypt.” The Old Testament on the whole emphasizes the need of maintaining peace rather than conflict. Where God reigns there should be no war or violence but peace and justice as portrayed in the book of Isaiah (Isaiah 11: 1 - 9).

King David is said to have made a great name for **himself** by the slaughter of thousands of people of the neighbourhood and that he ruled over the whole of Israel and maintained law and justice among all **his** people (2 Samuel 8). But he failed to appease God by his mighty deeds. By David’s statement it is evident that God retaliates the crimes of people - committed even in the name of service to Him. He abhors such services that are done at the cost of human lives: ‘Solomon, my son,’ he said, ‘it was my intension to build a house for the name of the LORD my God; but the LORD forbade me and said, “You have shed much blood in my sight and waged great wars; for this reason you are not to build a house for my name. But you will have a son who will be a man of peace; I shall give him peace from all his enemies on every side... It is he who

will build a house for my name..." (1Chronicle 22: 6 - 10). The God of the Old Testament is not in favour of war, whether it is considered holy or just.

4.3 Wars of the Christendom

The medieval history witnessed different interpretations of the concept of war. Crusades waged against non-Christian rulers, was an outcome of a wrong understanding of the concept, 'God of the Nations'. It was a mixture of religious fundamentalism with personal arrogance, which is contrary to the expectations of the Prince of Peace. "The papacy endorsed the long series of Crusades...under the cry, 'God wills it!'" (Swain 1982, 105). The reason shown for the first crusade was the papacy's desire for a "perfect universal church" and that that "perfect and Universal church must reign in the Holy land." The result of which is, "when the papal warriors took Jerusalem, the blood of the conquered ran down the streets until the conquerors splashed in it as they rode. The victors entered the 'Holy Sepulchre' and folded their bloodstained hands in prayer" (Swain 1982, 107, 108).

Stephen Neill quotes Steven Runciman as saying: "There was so much courage and so little honour, so much devotion and so little understanding. High ideals were besmirched by cruelty and greed, enterprise and endurance by a blind and narrow self-righteousness; and the Holy War itself was nothing more than a long act of intolerance in the name of God, which is the sin against the Holy Ghost" (Neill 1960, 59).

It is worth noting here the understanding of the Church Father Origen. He counted Christians as better citizens of the empire if they had rejected military service and vanquished all demons who stir up war and disturb the peace by their prayers" (Swain 1982, 104).

The God of the Nations is portrayed by Prophet Isaiah as the one who would judge between the nations and arbiter among many peoples. The result of such judgment is that "They shall beat their swords into mattocks and their spears into pruning-knives: nation shall not lift sword against nation nor even again be trained for war" (Isaiah 2: 4).

Pete Tobias Rabbi of the Liberal Synagogue Elstree considers Jesus a Rabbi in the order of the prophets of the Old Testament. Commenting on the sayings of

Jesus Tobias opines, "He emphasized as did the ancient prophets that, ethical treatment of others was more important than adherence to archaic ritual. The rest, as they say, is history. It just depends who's writing it and how it's interpreted" (Tobias 2007, 119). It is understood that terrorism perpetuated under the garb of jihad does not grant immunity to the innocent even though it is called holy war. As Charles points out, "The assassination of innocent noncombatants distinguishes terrorism from just war" (Charles 2005, 151,153).

The scriptural provisions are meant for man to do the will of God. Where discernment of His will is lacking, people tend to commit heinous acts against others and use religious faith to justify their actions. What is therefore required is to know the scriptures whether Qur`an for Muslims or the Bible for Christians and to find what is right in the sight of God. The scriptures must help the religious communities to develop a right understanding of the nature of God in order to live within the purpose of God. God takes vengeance on the arrogant and the wicked. He keeps account of the evil deeds of every people group and would judge every one accordingly.

Scriptural interpretations in general and regarding holy war and peace in particular need to be people oriented. The Creator God is concerned about the well being of His Creatures and His word must communicate such values. It is an accepted truth from Qur`anic or Biblical perspectives. Nevertheless the concept of holy war continues to stimulate religious people, upshot of which is conflicts and blood shed. It is seen in the comparative study that such an ideology is not pleasing to God but abominable to Him. Hence there is a need for reinterpretation of the scriptural law and so ways of rereading the Qur`an as understood by scholars is studied in the following chapter.

CHAPTER V

REREADING OF THE QUR`ANIC LAW

The changing world order with its secular ideology, global market economy and information technology has brought the Nations nearer to each other. There is a phenomenal growth of interdependence among the people groups irrespective of their religious affiliation or convictions. Polarization would be a stumbling block for the prosperity of the global village. In the light of the changes and developments there is need for Qur`anic law to be understood and applied to human situations in a way which would benefit the faithful in their religious and social life. It has been amply made clear by number of scholars that the Shari`a cannot be interpreted in the same way as in the days of Muhammad or the Caliphs. Times and situations have changed. Islam has penetrated into almost every culture thereby making it a religion of all people groups. Muslim Ummah could thrive only by peaceful coexistence with people of other faiths. To grow in this way of life the Qur`anic law needs to be understood in the light of the context and situation. The situation thus warrants every religion to re-read its scripture in order to guide the faithful towards communal harmony.

Re-reading here is to mean reinterpreting the scriptures so as to find meaning relevant to context thereby enabling the reader relate to every one without prejudice or bias. There are many attempts made by modern Muslim scholars to educate the people with such interpretations and with a claim that the message of the Qur`an is relevant and adequate for all ages. It implies that the Qur`anic law should address any complex problem arising out of changes in the world order. Some such attempts of reinterpretations are considered in this chapter.

5.1 Perceptions of the Qur`anic Law

“The political resonance of the Shari`a, historically and at the present, is associated with its function as a language of justice. It is not just ‘law’ in the modern sense, but a total discourse of religion, morality and justice” (Zubaida 2003, 4). It is also considered as “the spinal column of the Islamic civilizational project”. Abdullahi A-Nai`im, a Lawyer, is opposed to abandonment of Shari`a law and says, “It is objectionable as a matter of principle because it violates the religious obligation of Muslims to conduct every aspect of their public as well as private lives in accordance with the precepts of Islam...” Having said that he advocates against the full application of the historic Shari`a saying, “I find it morally repugnant and politically untenable. It is morally repugnant, in my view, to subject women and non – Muslims to the indignities and humiliations of the application of Shari`a today.... Given the concrete realities of the modern nation – state and present international order, these aspects of the public law of the Shari`a are no longer politically tenable” (Zubaida 2003, 175).

Thus secularist Muslims do insist on their adherence to Islam and the ‘real Shari`a’ but maintain that Islam “is primarily a religion and a culture, and its Shari`a a wide programme, a method, with values and principles, but not fixed law codes for all time” (Zubaida 2003, 178).

The literal meaning of the word ‘Shari`a’ is “a road to watering place, the path to be followed. In technical terms it is the canon law of Islam, a divine revelation and the totality of God’s Commandment (*Hukm*). The science of jurisprudence commonly called ‘*Fiqh*’ “implies the exercise of the intelligence in deciding a point of law in the absence of a binding command from the Qur`an...” ‘*Fiqh*,’ is considered to have been created by human beings and deals with legal acts of men while ‘Shari`a’ includes all human actions – moral, social and legal.

The spirit of the law in Islam is religious as well as ethical. The content of the law is largely based on customary laws of the pre-Islamic period, though inspired by the Qur`an and the teachings of Muhammad. Muhammad never created a system of law, but used the existing traditions and modified them to suit the occasion (Ahmad 1995, 10). God has the supreme legislative power to enact laws and there is no legislative power in the State according to Islamic system. Recognizing this view the British Government ruled that any attempt to

modify Muslim law should be considered as an invasion on their religion. Nevertheless, there were legislative modifications to the application of Muslim Law subsequently.

5.2 Application of Biblical Hermeneutics

The Principles applied in the Biblical interpretation should be discussed at this point where Qur`anic reinterpretation is elucidated. Any scriptural interpretation should be on the basis of accepted hermeneutic principles. There were shifts in the applied biblical hermeneutic principles in different ages. The Church in the Greco Roman world held the Old Testament as the Scripture to proclaim Jesus of Nazareth as the Messiah. The Mediterranean world adopted the concept of 'Logos' from the Greeks to present Jesus Christ to people of other faiths. Under the Roman Empire with Papal authority in the Church the decrees of papacy became hermeneutical principles to interpret the Bible. During the Reformation period 'justification by faith', 'salvation by grace' and 'Scriptures by Scripture' became interpretative principles. At the modern period mission oriented interpretation became hermeneutic principle and thereby preaching Christ and witnessing for him in order to spread the church became apparent. The Existing 'common hermeneutics' as Suryaprakash says are, "the prophetic demand for justice, the liturgical renewal, and personal commitment to Jesus Christ..." (Suryaprakash 1995, 67, 68). In respect of hermeneutical challenges George Mathew Nalunnakkal quotes John Howard Yoder, "A text should be read for what its author meant to say and what its first readers are hearers would have heard it say" (Nalunnakkal 2003, 5).

5.3 Christian Interpretation of the Scriptural Law

Biblical scholars maintain that the "principal task of interpretation centers around the author's intended meaning." They also admit that there are complications in biblical hermeneutics and show reasons therefor. One of the reasons being the struggle of finding what the divine author intends through the text that is written by human author. The other reason is the problem of making sure if the divine intention exceeded the intention of human author (Brown 1968, 606). The Christian interpretation of the Scriptures should therefore be on the basis of how **Christ** himself read and interpreted them to his hearers in the

synagogues, public places and in private group gatherings as recorded in the Gospels. While acknowledging the religious scholars of his day, like the Scribes and Pharisees, as authorized interpreters of their Scriptural Law, Jesus vehemently condemned them where they misinterpreted the provisions of the law and misled the people. In almost all such occasions where an interpretation was needed Jesus gave a new interpretation whereby people could find truth leading to a new way of life. Here are a few examples of such occasions that warranted Christ's interpretation.

He said, "The Scribes and the Pharisees occupy Moses' seat; so be careful to do whatever they tell you. But do not follow their practice; for they say one thing and do another. They make up heavy loads and pile them on the shoulders of others, but will not lift a finger to ease the burden" (Matthew 23: 1– 4). They were constitutional authorities for determining the Law and are eager to keep the letter of the command in accordance with the scripture, which says, "See that you carry out exactly what I command you: you must not add any thing to it or take anything away from it." But while interpreting the laws they either evaded certain commandments or added innumerable laws of their own. Our Lord condemned such acts of misinterpretation of the Law and said, "Alas for you, Scribes and Pharisees, hypocrites! You pay tithes of mint and dill and cummin; but you have overlooked the weightier demands of the law – justice, mercy, and good faith" (Matthew 23: 23 – 28). The Pharisaic theory and practice influenced the interpretation towards severity rather than humane interpretation of the Law (McKenzie 1968, 102).

The Pharisees questioned Jesus, "Why do your disciples break the ancient tradition? They do not wash their hands before eating" (Matthew 15: 2). Christ Jesus commented on the defective interpretations of the scholars like Scribes and Pharisees saying: "...Why do you break God's commandment in the interest of your tradition? For God said, "Honour your father and mother," and "Whoever curses his father or mother shall be put to death." But you say, "Whoever says to his father or mother, 'Anything I have which might have been used for your benefit is set apart for God,' must not honour his father or mother." You have made God's law null and void out of regard for your tradition..." (Matthew 15: 3 – 6). In relation to tradition and the Law, the rabbinical interpretation held the

tradition second in rank to the Law as a source of obligation. While answering question of breaking the tradition Jesus charged them saying, "The Disciples ignore the tradition, but the scribes and Pharisees nullify the Law" (McKenzie 1968, 89, 90).

Interpreting the law relating to washing of hands before eating, Jesus said that the "wicked thoughts, murder, adultery, fornication, theft, perjury, slander – these all proceed from the heart; and these are the things that defile a person; but to eat without first washing his hands, that cannot defile him" (Matthew 15: 19, 20). Christ's interpretation highlights the point that legal cleanliness is nothing, for all that man eats ultimately issues in the height of uncleanness. This is irrelevant to morality. McKenzie observes, "True cleanliness or uncleanness is determined from the heart. Actually not all things mentioned proceed from the mouth; but in biblical idiom the mouth is the channel through which the heart externalizes itself, and the line between 'word' and 'deed' is thin. The wicked plans of the heart lie at the root of the crimes men commit." (McKenzie 1968, 90).

Interpreting the law, "Do not commit murder; anyone who commits murder must be brought to justice" Jesus said: "But what I tell you is this: Anyone who nurses anger against his brother must be brought to justice. Whoever calls his brother "good for nothing" deserves the sentence of the court; whoever calls him "fool" deserves hellfire. So if you are presenting your gift at the altar and suddenly remember that your brother has a grievance against you, leave your gift where it is before the altar. First go and make your peace with your brother; then come back and offer your gift" (Matthew 5: 21 – 24). Worship is to a Jew or Christian or Muslim the most sacred act in accordance with the scriptural law. But our Lord in His restatement of the Law holds that the worship should "be postponed for reconciliation" (McKenzie 1968, 71)

Interpreting the Law, "Do not commit adultery" Jesus said, "But what I tell you is this: If a man looks at a woman with a lustful eye, he has already committed adultery with her in his heart" (Matthew 5: 27, 28). The lustful gaze is mentioned very frequently in the rabbinical literature." Directing His reinterpretation of "Do not commit adultery" towards "the root of the impulse"

Jesus said that the “lustful desire is as guilty as the adulterous action” (McKenzie 1968, 72)

Further, on the law, “An eye for an eye, a tooth for a tooth” Jesus said, “But what I tell you is this: Do not resist those who wrong you. If anyone slaps you on the right cheek, turn and offer him the other also” (Matthew 5: 38, 39). Our Lord’s reinterpretation of the Law of retaliation implies two important principles. One is that any physical violence is to be suffered and not retaliated with physical violence. The other is that one must not “meet legal action with legal action but to yield what is contested and even beyond what is contested” (McKenzie 1968, 72). Above all these Jesus’ reinterpretation of the common religious law of most scriptures, “Love your neighbour and hate your enemy” paves way for a harmonious living of all communities together and that is: “Love your enemies and pray for your persecutors” (Matthew 5: 43, 44). The neighbour according to McKenzie is “the member of one’s group or fellowship: one’s village or town, one’s religion or nation, one’s tribe or race.” What Christ meant is to extend one’s love towards “toleration of hatred of the enemies of one’s group” (McKenzie 1968, 73).

“Which is the first of all the commandments” is the question of the scribe, who was considered Authorized Interpreter of the Law. Jesus summarized the Law and Commandments saying, ‘The first is, “Hear, O Israel: the Lord our God is the one Lord, and you must love the Lord your God with all your heart, with all your soul, with all your mind, and with all your strength.” The second is this: “You must love your neighbour as yourself.” No other commandment is greater than these.’ The scribe who posed the question to responded, “Well said, Teacher. You are right in saying that God is one and beside him there is no other. And to love him with all your heart, all your understanding, and all your strength and to love your neighbour as yourself – that means far more than any whole-offerings and sacrifices” (Mark 12: 28 – 33).

Archbishop George Carey quotes Richard Norris as saying, “The isolated scholar at her desk is no proper model for ecclesial interpretation of the scriptures, any more than is the preacher who makes every text a pretext for his personal message. To understand in practice what interpretation of the Bible means, the Church must find ways of fomenting communal, dialogical – and

withal informed – study of the scriptures: and, it might be added, study that is motivated by something deeper than a desire to ‘find an answer’ to the latest burning issue” (Carey 1993, 252). Carey feels that scriptural interpretation is to enter into a dialogue with the word of God so that it may have an impact on our lives.

5.4 Reinterpretation: A Muslim Perspective

According to Fazlur Rahman the task of the ‘Ulama’ is to constitute religious leadership for the community enabling the community to ‘create and formulate ideas (ijtihad)’ which emerge as ‘ijma’ or public opinion in the form of law. Such law is considered to be perfect Islamic law and which could be repeated or amended by another law more adequate. He calls the personal thought (ijtihad) and collective thought (ijma) as twin pillars upon which rests the structure of Islamic legislation (Rahman 1982, 263).

Basing on Surah 4:50 and 5:51 Fazlur Rahman opines, “The Qur`an sometimes asks Muslims that when they decide matters, they should do so in accordance with the Qur`an, and at other times, that Muslims should decide matters in accordance with justice and equity.... The principles enunciated in the Qur`an are justice and fair play” (Rahman 1982, 264). While pointing out that “one third of the entire Qur`an is devoted to the building up of an effective power-machine to safeguard the Muslim interests and the defence of the Muslim territories” Fazlur insists that “Islam enjoins positive peace and goodwill towards all peoples and nations of the world.” Qur`an (Surah 2:207) is quoted as saying “Enter ye all into peace, O, mankind.” He feels that the “Islam envisages world inhabited by the human race as a peaceful order devoted to the well being of man” (Rahman 1982, 270, 271).

With reference to Sura IX. v. 13 and Sura IX. v. 91, “If jihad is considered as a Qur`anic program of eradicating corruption on the earth and of enjoining the good and forbidding the evil it is justifiable, for it is a legitimate use of force by the state in terms of sustaining public order” (Little 1988, 84). But the factual use of the term or use of force is beyond such a purpose in most occasions. Islamic history has seen the use of a force to subdue unbelievers and with the motive of territorial expansion rather than a struggle in defence of

Muslim faith. It is an admitted fact that it is difficult to find “a consistent justification for jihad on the basis of the Qur`an” (Little 1988, 84).

Muslim law is of two categories as seen earlier. The first being Qur`an and Hadith considered to be roots of the law (usul-al-fiqh). The second category is of Qiyas and the ijma being consensus of the companions of Muhammad. The companions initially were people of Mecca and Medina and later Ulama or doctors of law. The branches of the law (furu-al-fiqh) dealt with the application of the law in specific cases (Nazir Ali 1983). Muslim jurisprudence had been codified by the jurists of the four schools of law. The finality of the Law Schools has been challenged by the modern day Muslims for as Khaled Abou El Fadl claims, “Muslim culture is undergoing its own unique historical transformation and emerging with its own intellectual paradigms” (El Fadl 2006, 99).

Wilfred Cantwell Smith is quoted as saying that Muslims who are trying to reinterpret Islam in the light of their experience in the modern world have come to the conclusion that the fundamental truths of Islam continue to “inspire and guide men but that its socio-religious institutions and its traditional law are seriously outdated and cannot provide a frame work for a modern state” (Nazir Ali 1983, 116). If the fundamental truths are to make impact in the social life of the community they need to be reinterpreted to the context and time.

5.5 Need of Reinterpretation

The Indian Courts of law are not free to have their own constructions on the Muslim law where interpretation is required. The courts have to “follow the authoritative jurists of the ancient times as well as the authoritative texts. The authoritative texts in India are the Hedaya and the Fatawa-i-Alamgiri on Sunni Law, and Sharya-ul-Islam on Shia Law.” When such authorities are in conflict, as common in many cases, the courts have to seek the opinion of that authority whose interpretation “seem to be most appropriate according to the principles of justice, equity and conscience” (Purohit 1998, 100).

It is interesting to note that the court cannot reject an opinion given where there is no conflicting opinion on some point of Muslim law “even though it is against the principles of justice, equity and good conscience” (Purohit 1998, 101). Wakf Board Chairperson of Tamil Nadu and Senior Advocate Badar Sayeed says, “The tenets of Qur`an and laws of Shari`at should be interpreted in the new

social milieu." Commenting on public pronouncements and ground realities she says, "Unless there is one interpretation of the Qur'an, there will be unwanted interference of the courts and other unscrupulous governing bodies" (Deccan Chronicle 18/3/2002, 6).

Some Muslim scholars attempted for a 'creative ijthihad' meaning 'radical hermeneutic' using 'techniques developed for the study of the Christian scriptures' and with the 'reverent historical and textual criticism'. But the attempt was disapproved by the Muslim masses (Nazir Ali 1987, 49,50). It is evident that there exists a tension between those who seek innovation and those who desire to be traditional within the scholarship of Islam.

5.6 Norms of Reinterpretation

In the interpretation of law there exist two dominant principles. Enacted law needs to be interpreted on the basis of those principles in order to derive its legal authority. The legal validity of an enacted law is possessed by 'letter' as well as the 'spirit of enactment'. Interpretation is a process by which "the meaning of the expressed authoritative forms of the legislature is understood" (Fitzgerald 2004, 132).

In the two kinds of interpretations, the first one is of the 'verbal expression of the law.' The second called free interpretation, departing from the letter of the Law, seeks for other and more satisfactory evidence of the true intention of the legislature elsewhere (Fitzgerald 2004, 132). According to Salmond, "The essence of the law lies in its spirit, not in its letter, for the letter is significant only as being the external manifestation of the intention that underlies it".

Nevertheless, the judiciary "must in general take it absolutely for granted that the legislature has said what is meant and meant what it has said, "There is no freedom "to add to or take from or modify the letter of the law" even if there is reason to believe that the true meaning is not correctly expressed by it (Fitzgerald 2004, 133). Where there is an ambiguity in extracting meaning of a law from the literal form it becomes a rightful duty "to go behind the letter of the law and to ascertain from other sources at best they can the principle intention which has thus failed to attain perfect expression" (Fitzgerald 2004, 136).

It would be absurd and unreasonable if a statute with inconclusive letter of the law is interpreted literally. Hence, it is essential to follow the methods of interpretation accepted by the Indian Jurisprudence as considered hereunder.

5.6.1 Philosophical interpretation

In the philosophical interpretation, principles of ultimate 'right and wrong' are the main concern. Much importance is given for human conscience and good and right human conduct when the law is applied to situations and matters in issue.

5.6.2 Analytical interpretation

Analytical interpretation method is to analyze and to examine the 'structure of law in a logical and scientific manner'. There is no consideration for ideal or moral elements. Technical and logical understanding makes all the difference in the interpretation. Analysis of such kind would help in deduction of legal provisions without bias or prejudice thus providing the true meaning of the law.

5.6.3 Historical interpretation

While looking at the origin and development of legal principles one should be aware of the historical treatment of an issue. Precedence plays a vital role in the application of a legal provision. Thus historical interpretation seeks to know the past and enable the present interpretation to consider the changes that occurred and its relevance to the context.

5.6.4 Sociological interpretation

Sociological interpretation is done in the interest of the "social control for harmonizing and adjusting human interests with minimum friction and waste." That is to say that the law should be understood in terms of working for a harmonious society. It should also suggest ways and means of making adjustments within the human society avoiding friction and resultant waste.

5.6.5 Comparative interpretation

According to comparative interpretation solutions to common problems are sought through a study of precepts, doctrines and legal institutions. To study

these different systems of law are referred to before arriving at a conclusion on a particular matter (Dhyani 1999, 21, 22, 23).

It is noteworthy that the methods of interpretation accepted by the Indian Jurisprudence lay a foundation for reinterpretation of any religious law. The salient features of the method focuses on the harmonious social life with necessary ingredients. Although there should be analysis of logical and scientific examination of the provisions of law, right conduct and good conscience are insisted upon. It implies that required changes are necessary to understand the religious law and make it relevant to the context in human interests. All these aim at finding solutions for common problems of the communities thereby facilitating harmony in the society.

5.7 Re-interpretation of Jihad

Syed Ahmad Khan called for reinterpretation of Qur`anic faith in order to enable Muslims to attain material, social and intellectual progress, and claimed that the door of ijtiḥad or free enquiry regarding the legal injunctions of Islam should be reopened." He insisted that the Qur`an and the traditions should be interpreted in the light of modern experience. For him Jihad (holy war) was in the cause of religion and "allowed only if a Muslim country is invaded and the aim of the invaders is, manifestly, to destroy Islam". Syed voiced against the Ulama who had declared jihad against the British for invading Muslim soil. His resentment against the Ulama was because of his unbiased understanding of the British who in his opinion saying were Islam's well wishers and wanted the Muslims to develop socially, politically and economically (Nazir Ali 1983, 108).

Ubaidullah Sindhi, who was involved in anti-British activities interpreted jihad as "to mean an Islamic social revolution which destroys the monopolies of the rich and the imperialism of one nation over another." It is with the view of using jihad as a weapon against atheism and materialistic capitalism Ubaidullah recommended Jihad as "the Muslims answer to the atheist Marxist revolution" (Nazir Ali 1983, 117).

The modern Islamic scholars interpret the concept of jihad differently depending on their sectarian affiliations. According to the early Islamic Lawyers jihad is of four kinds and they are being applied to those who are attempting to reinterpret the Qur`anic provision of jihad:

- a) Jihad of the heart denoting spiritual striving;
- b) Jihad of the hand devoting physical striving – work or labour;
- c) Jihad of the tongue devoting striving in preaching or debating;
- d) Jihad of the sword denoting striving in war hence holy war.

And all these striving are to be in the way of Allah and for His cause only. For Hasan al- Banna of Muslim brotherhood, jihad is not just of the spirit but of arms by militant means. However he added, that it has to be “tempered by an approach which is merciful” (Musk 1992, 97).

Reacting to Pope Benedict’s reference to Jihad as ‘Holy War’, Senior Muslim Scholars including Muftis of Egypt, Oman, Uzbekistan, Istanbul, Russia, Bosnia, Croatia and Kosovo and Shia Ayatollah, Jordanian Prince Ghazi bin Mohammad bin Talal and Western-Based Academics declared, “Jihad means a struggle in the way of God and did not necessarily have to include force” (Hitavada 2006, 19) Jihad, according to Maulana Muhammad Ali is exertion of “one’s power in repelling the enemy or in contending with an object of disapprobation.” Such an exertion could be towards a missionary activity of a Muslim or in order to defend his faith (Muhammad Ali 1944, 252).

5.8 Re-interpretation and Peace making

Abdullehi A. An-Na`im is quoted as said that the religious groups should be “open and attentive to human rights language” and support secular states, for there is an “interdependent relationship” between religion, human rights and secularism. Any religion needs human rights in order to protect the rights of the believers and to ensure freedom of belief and practice and liberative development of religion.” “Human rights need secularism for political stability and mediating conflicts among different religious communities.” “Secularism needs human rights as a normative guide against abuses by the state and needs religion as a practical moral guide for believers” (Tibbey 2004, 44). To achieve the societal peace and communal harmony we need to understand the causes underlying the social structures.

According to John Esposito there is a movement of re-interpretation (ijtihad), not intending “to accommodate new ideas but to get back to or re-appropriate the unique and essentially complete vision of Islam as preserved in its revealed sources” (Esposito 1988, 119). The Wahhabis as a “religio political

movement" waged holy war against even Muslims who resisted them saying that they were unbelievers and enemies of God who must be fought. In their interpretation "they sought to formulate Islamically acceptable solutions for new situations" (Esposito 1988, 120, 121). The Jihad movements emphasized "a spirituality that incorporated a militant activism with its willingness to fight and die to establish Islamically oriented states and society" (Esposito 1988, 121).

The Sannassi movement believes that much of the Islamic law had been distorted by ulama interpretation (Esposito 1988, 122). For Shaw Walli Allah "reinterpretation was not to formulate new answers but to rediscover forgotten guidelines from the past" (Esposito 1988, 125). Ahmed Khan called for a reinterpretation "to demonstrate the compatibility of Islam and modern science (Esposito 1988, 138). The revivalist movements of Islam in general are in unison to call jihad as a struggle and it requires moral self- discipline and, where necessary, armed struggle to reassert the rightful place of Islam in the society (Esposito 1988, 127).

5.9 Reinterpretation and Mysticism

Sufi scholars try to reinterpret the Qur`anic provisions differently and in accordance with the original convictions of Islam. One of the conditions that played a part in the development of Islamic mysticism according to Iqbal was the "dry orthodoxy of the major legal school of Islam and their bitter opposition to free thought." Love of God, the union that is created by an intimate relationship with God, the love that makes man realize the Eternal Beauty and his own identity with it are some of the salient thoughts expressed by Sufis over the time. An Indian Sufi, Sheikh Ahmad Sarhindi is one of those who "retained the distinction between God and man and yet could speak of a 'unity of love' between them" (Nazir Ali 1983, 63). Another group of "Sufis lay great stress on the dualism between light and darkness, matter and spirit, good and evil...." Their expression of salvation is in terms of "sloughing off the body as moving from darkness to light, as uniting knowledge and virtue within oneself, as fighting the evil order of the world..." (Nazir Ali 1983, 63).

The Sufis express that their understanding of Islam is not concerned with participation in the struggle for political power but "setting up just social order in keeping with the Qur`anic teachings". They affirm that their struggle is more

spiritual than legal. Chishti order of Sufis strongly believe in the doctrine of "Unity of Being and a 'total peace, peace with all'" (Hitavada 2/07/2006) and so claim themselves to be the bridge between Hindus and Muslims.

Sufi writers talk about two jihads viz. 'the greater warfare' (al-Jihadul Akbar) and 'the lesser warfare' (al-Jihadul Asghar). The former is to mean an effort against one's own lusts and the latter to strive against the infidels. The purpose of such warfare is to advance Islam and to repel evil from Muslims. The warfare here is merely personal and spiritual in order to make one better believer in God.

In his book, "Islam: A Christian Perspective" Nazir Ali suggests that Iqbal's writings have reinterpreted 'classical Islamic doctrine' and reflected a 'philosophy of spiritual pluralism' (Nazir Ali 1983, 61). Iqbal, being a sufi himself is said to be maintaining conservatism, yet with open attitude towards people of other faiths (Nazir Ali 1987, 58).

Lewis gives an example of the ill effects of traditional interpretation of jihad. Shah 'Abdul-'Aziz declared a fatwa in 1803 that the areas of Northern India under the influence of British were dar-al-harb (the abode of war) thus implying that Jihad against British rulers was legitimized. Saiyid Ahmad too had accepted the fatwa and resolved on jihad. In order to undertake an attack on the British from Muslim territory Saiyid Ahmad mobilized the Pathans in the North-West Frontier against the Sikhs. The result of that jihad was that he and six hundred of his Muslim followers were killed by Sikhs at Balakot. A tribal leader Yar Muhammad Khan Durran commented that Saiyid Ahmad in the garb of a Faqir aspired to become a ruler (Lewis 1985, 49, 50). Commenting on the contribution of Sufis and seeking their advice for making Shari'a law more effective and to propagate Islamic values said, "Who better than the Pirs from whom to seek such advice since majority of the population is not only under your influence but is away under your command" (Lewis 1985, 49, 50). It indicates that the rulers intended to use the Sufis for the promotion of Shari'a.

5.10 Re-interpretation of Biblical Concept of War

It is important to look at the concept of war in the Bible for the Old Testament sets the model of an organized religion amidst the religious plurality. Hence, the following discussion on the concept of war. Craigie, in his book, "The

Problem of War in the Old Testament” puts forth three ‘principal objects’ in warfare from military perspective and they are:

- a) To destroy the military power of the enemy so that the enemy could not undertake war any more.
- b) To conquer the enemies territory and to gain the strength of additional military force from that territory
- c) To cease war when the enemy’s will to fight is subdued.

Craigie has made a distinction between Holy War and Religious war and claims, “that the wars of the Hebrews were religious wars; that is they were initiated and carried out within the context of religion” (Craigie 1986, 46, 47). “...To say that the wars of conquest described in the Old Testament were religious war is not necessarily the same as saying that they were holy wars. The word ‘holy’ implies something which is intrinsically good and pure in itself.” “Can war, even war in the context of Biblical religion properly be called holy?” is the question raised by Craigie.

The Biblical expression ‘wars of the Lord’ as found in the books of Numbers 21: 14, 1 Samuel 18: 17, 25: 28 and the connotations like ‘warriors consecrated to the Lord’, ‘God’s presence was with them,’ ‘victory was celebrated by singing songs in praise of God’ might show war as religious in character. It cannot be called a holy war for the acts that are essentially evil never were transformed into a holy act.... “The ruthless requirement for the extermination of the enemy-men, women and children – in any way” cannot be regarded as holy (Craigie 1986, 48, 49).

While calling war as a ‘terrible business’ Craigie is optimistic of its by-products, “...out of its darkness certain positive human qualities may emerge, such things as courage, faith and hope” (Craigie 1986, 51). It could be true if the war is interpreted as a struggle against the evil forces in a spiritual sense. On the contrary when it is interpreted in literal sense of an aggressive war the reality “is to be found in fear, death and destruction, in the bodies of soldiers shattered by shrapnel, in bombed houses elapsing on their inhabitants, in starving orphans desolate in streets, and in the rape, looting, and sadistic cruelty which are negative byproducts of war” (Craigie 1986, 51). By the mix up of the religious

war of prejudice and hatred with the holy war of spiritual advancement the exercise ends in irreparable loss in the society.

The 'Just war' theory of the Christian history is another aspect of war justified by Christian denominational leaders. According to this theory the war was to be fought with certain rules of conduct. "There was to be no unnecessary violence, no needless destruction, and no acts of vengeance or reprisal" (Craigie 1986, 52). Although there is a 'Principle of moderation' insisted in the theory of just war there is an unrealistic character to this advocacy of just conduct in it (Craigie 1986, 52). Where human emotions are aroused to their maximum level, discerning of just and unjust become almost impossible. In such situations spiritual or ethical values would not be operational.

War is an 'unmitigated evil,' a 'human activity' and always contrary to the principles of the Kingdom of God. There are ample evidences in the Old Testament itself that God was not pleased with Blood shed. When David intended to build a temple for God, He rejected it saying, "You are not to build a house for my name, because you have been a fighting man and you have shed blood" (1 Chronicles 28: 2, 3).

A prophet of the Lord by name Obed condemned the Acts of the Israelites, "...But you have massacred them in a rage that has towered up to heaven. You now propose to force the people of Judah and Jerusalem, male and female, into slavery. Are you not also guilty men before the Lord your God? Now listen to me, send back those you have taken captive from your kinsmen, for the anger of the Lord is roused against you." "... You must not bring these captives into our country; what you are proposing would make us guilty before the Lord and add to our sins and transgressions. We are guilty enough already, and there is fierce anger against Israel" (2 Chronicles 28: 9, 13).

5.11 Peace Oriented Judicial Perspectives

Modern Judicial systems have developed new ways of dealing with disputes with a view to find peaceful and lasting solutions between litigants. The reinterpretation of the scripture in the light of such judicial systems will help religious communities to shed hatred and live in peace. The Religious leaders should guide the people by relevant and appropriate interpretations to the scriptural provisions enabling them to live in harmony with their neighbours. If

they themselves could play the role of mediators and arbitrators with unbiased approach to the issues, people would not only repose confidence in them but communities would submit to their leadership also. How good it be for the interpreters of the Qur`an to promulgate Fatwas so as to encourage settlement of disputes.

The Changing world order has brought significant changes in the legal systems. The changes are necessitated by the increase in the number of litigations among individuals and communities. The General Assembly of the United Nations intended that there should be uniformity of the law of arbitral procedures practiced among the nations. It is to permit an Arbitral Tribunal to use mediation, conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes (Avtar Singh 2006, 2).

In the light of the existing secular peace oriented legal systems, it is mandatory on the part of religious groups to interpret their scriptures to find the Word of God coming to them alive to the situations. As long as the purpose of such understanding of the scripture is for human welfare and communal harmony, there should be no contradiction thereto. Here is an example of the possibility of arbitration and conciliation principles being effective; there were occasions when an outbreak of communal violence was anticipated Government officials used to call for meeting of all religious leaders and make them resolve to abide by certain decisions made towards peaceful observance of their respective religious festivals. Thus it is necessary and would benefit to look at the alternative dispute resolution systems to help finding solutions for the problems that cause religious communities loose their tolerance towards one another. If such systems remain only in the judiciary or organizational level, the provisions of such systems should be adopted by the religions with the view to reinterpret their scriptures. The development of alternative dispute resolution systems is largely on account of the realization that fights or litigations are not the solution for the problems and the number of pending court cases are on the increase beyond the capacity of the existing courts to handle. It is also understood that peace and harmony cannot be achieved by show of strength or human power.

Elizabeth Salter a religious journalist who was deeply involved in development and peace concerns writes her experience on her conciliatory

involvement. It was in the 1990s when Armenia and Azerbaijan “were locked in a brutal war” on the basis of their religious convictions. She says, “We were proposing that the faith communities should join to make a positive contribution to the ending of the conflict. Our delegation from the World Council of Churches visited the Sheikh ul Islam, the leader of all the Muslims in the Caucasus. When we asked him why he felt comfortable with us as conciliators, he replied, ‘Because you are the only people I can trust.’ The two leaders went on to meet and to make several joint decisions, helping the search for a peaceful solution” (Salter 2007, 272).

In anticipation of developing a peace loving community of God’s people, Muslims or Christians or others must look at their scriptures afresh. Preach the values of the peace oriented faith and love towards neighbours.

The common features in the effort of understanding the scriptures of Muslims and Christians particularly in terms of war and peace is seen in the chapter. It is also seen that there is scope for peace oriented interpretations within the set norms of interpretation. In the light of these insights, ways of building effective Christian – Muslim relation is studied in the next chapter.

CHAPTER VI

CHRISTIAN – MUSLIM RELATION

There is a possibility of developing strong base for a meaningful relationship among the Muslims and Christians on the basis of the fact that they share common values in terms of their strict adherence to their Scriptures. Prophet of Islam asked his followers to live in fellowship with the People of the Book (*Ahl al Kitab*). The People of the Book, be it Christians or Jews live in accordance with the provisions of the Book of Law. Considering the standing instruction in the Qur`an requiring compliance of the believers of Islam towards peace making it is common religious value for Muslims as well as Christians whose primary commandment is to love God and neighbour. Towards developing mutual respect and fraternity resulting in the building up of harmony and peace among the communities some suggestions are made in this chapter. These are based on the practical experience in the context of communally sensitive city of Hyderabad.

6.1 Living in Dialogue

As it is mentioned in the introduction, Hyderabad has been a city of diverse cultures and religious faiths since hundreds of years. In the old localities people live in fellowship with their neighbours. Christians are trusted friends of Muslims. They hold informal and friendly discussions on common religious topics. It is a common phenomenon among people of various levels – from low level skilled workers to high level professionals. To illustrate, Manzoorbhai, a welder was given the job of fabricating a steel frame work on the wall of the altar at Christ Church. He and his men did the job with skill and to the perfect fitting of the carved wooden panel on to it. When asked for the bill, he responded, "Father, what can I charge for the house of Allah? I am duty bound to do this job. Pay me only the cost of the material." Manzoorbhai, a staunch Muslim considers the Church as the house of God. When a Christian brought his newly purchased vehicle for prayer the Muslim helper who accompanied him said, "Sir, sprinkle

some water from here on the vehicle, for the water of the Church premises is blessed water." These are expressions of common people without any faith based prejudice.

What is therefore needed in the present scenario is to build up confidence and trust where doubts and fears developed on account of riots and conflicts. This could be done effectively by the religious leaders whose scriptural interpretation should make impact in the life of the community. Interpretation of the Qur`an or Bible must be equipping the believers for an effective dialogue with their neighbours. Theological insights must reach common people lest they be found wanting when they are in dialogue. False teaching and misinterpretation of the Word of God cause unnecessary hatred, suspicion and division in the community both within and at large.

6.2 Conflict resolution

Conflict here is to mean outbreak of communal clashes in localities where there was absolute peace. The cause for the tension is mostly alien and not local. Some one is stabbed to death somewhere by somebody and the news is spread giving the colour of a communal fight. Very often it has been an organized killing to provoke the communities to hate and fight. This conflict has had bitter consequences and left indelible marks on the community life.

It has been observed that during such times of tension personal prejudices, business rivalries and group clashes settle their scores. The common phenomenon is to see the shops of the rivals being ransacked and burnt at such communal clashes. Political parties too involve in instigation of such conflicts to blame the party in power for failure of maintaining law and order in the state. How many shops, business firms, and work shops have been gutted? How many police personnel and fire tenders were injured or died? How many young men were slain? How many innocent people lost their lives and properties for reasons unknown to them? At one instance a Muslim father had to bury six of his sons the same day in the old city - all of them were killed in a communal clash. Religious affiliations and spiritual convictions are projected as reasons for all these bitter losses of persons, properties and relationships.

Conflict resolution in such situation is possible only by promoting faith based values sought from the scriptures of each community. The spirituality emphasized by the religions should work for solutions to the problems. Basing on the need for common welfare and communal peace, the cause for the sudden uprising should be analyzed. By the knowledge of the truth in a given situation of conflict, outside interference or instigation could be easily set aside and the consequential losses could be avoided. Long standing enmities between persons should be tackled at the personal level and they should not give effect to a communal clash.

6.3 Peace Centers

Christian homes were and are fortresses for Muslims as well as Hindus when they feel threatened by the rioters during communal clashes. Christians are trusted friends of both communities particularly in the old city of Hyderabad. It is also a common phenomenon that the Christian homes are the most sought after places for educational, medical and social services. Muslim women find their Christian neighbours as close confidants to share their concerns in terms their personal health, family planning, and economic problems.

Social Service organizations have started development centers with vocational training to young men and women who otherwise could not afford for such facilities. There is appreciation for skill training like carpentry, sewing, embroidery, motor mechanism and similar profitable trades. These centers should work as peace centers for there are ample opportunity for inter religious student community to exchange their views and convictions in friendly atmosphere. Prejudices and faith based hatred could easily be erased from their minds and develop confidence and trust in each towards the other community. Sensitive issues can be sorted out with negotiation for a peaceful coexistence. Service centers of Non Governmental Organizations should serve as peace centers besides their set programmes. Henry Martyn Institute of Islamic Studies has established a Peace Center, but it may not serve the people of grass root level in their local struggle, for it is meant for intellectuals and top level religious leaders.

6.4 Bridge Building between other Communities

Bridge building should be a consistent and organized effort without prejudice or personal motives. Social programmes of common interest and public welfare should be undertaken in every locality by the initiation of common forum consisting of acceptable leaders from among the communities.

6.5 Christian Mysticism in Christ's way

Spiritual warfare, using the weapon of the Word of God should continue in an attempt to deliver the people from the bondage of the evil spirits, related sicknesses, poverty and divided families. Selfless services of Christian mystics could reflect the power of our Lord, which is well known among the Muslim mystics who use the name of Jesus for exorcism.

6.6 Masih Mosques

There is a strong advocacy of Masih Mosques by missiologists for sufficient reasons. Muslims are people of the mosque in the sense their life is attached with the mosque of their locality. Worship and social life go hand in hand. The mosque is open all the time facilitating any one any time to go in and pray and meditate. Unfortunately Christian Churches are mostly kept closed. A Muslim who has been in the mosque all through his life cannot be away from the house of God just because he has accepted Jesus Christ as his Lord. His quest for the house of God, when not satisfactorily met, he grows frustrated. It is one of the reasons why many Muslims, knowing the truth fully well would not like to declare their adherence to Christian faith. Therefore it is suggested that those who have accepted Christ should have the freedom of maintaining similar way of practicing their faith. It involves that their church should be like a mosque with prayers for number of times and with attachment to the place of worship. It will attract even others for there will be little change in their cultural and social outlook. Worshipping God with the joy of salvation received by faith in the atonement of Christ Jesus alone would be distinctive of the Masih Mosque.

CHAPTER VII

CONCLUSION

In the changing world order where market economy dominates cultural and religious values, maintenance of faith based identities is becoming hard for particular communities. Interdependence is an unavoidable requirement for any individual, community or nation. This being the reality of the secular world, religious intolerance, communal disharmony and resultant hatred and animosity are on the increase. Large scale migration of people groups cutting across boundaries of regions, states, nations is necessitated by the post modern industries of globalization. Ethnic, racial, regional, national, cultural, and religious demarcations of the yesteryears stand shattered. Hence there is the emergence of a new world order wherein individuals and communities are forced to rediscover their identities, restate their values and redesign their way of public life.

The city of Hyderabad is not different from the global scenario. The changes faced by the faith communities of Hyderabad over the decades have created tension in the otherwise peaceful haven of multi religious society. The religious leaders are burdened with the task of providing necessary guidance to the faithful by relevant interpretation of their respective scriptural provisions. The Islamic community that value the Qur`anic law as the sole governing rule of their socio-religious life has to depend heavily on the interpretation of their religious leaders. The Islamic scholars are not in unison regarding their understanding of Qur`anic provisions even though they strive towards one universal Ummah. The sectarian groups are not in solidarity with the universal family of Islam as their convictions differ from others. The basis for such a situation is attributed to the multiple ways of interpreting the Shari`a.

The God of the Nations, Scriptures and Cultures rules over all changes, whether they are natural, man made or God ordained. Humans of every age look to Him who is the author and finisher of their faith. His word continues to guide

the people of faith in terms of their quest for knowing His will in their life. As in the days of Ezekiel where God complained against the priests who gave rulings which violated His law (Ezekiel 22:26), there were instances of such interpretation of the Qur`an that provoked religious intolerance resulting in communal disharmony. It is in this context that this study undertook to examine as to what extent the actions of the Muslim community match with their Scripture. How they are justified by their interpretations of Qur`an. Opinions of different Islamic scholars relating to interpretation is also taken into consideration. It is attempted to compare and contrast the Islamic jurisprudence with the Biblical hermeneutics. In the process, selected Qur`anic texts and their different interpretations relevant to context were studied. So also a few Biblical texts and their interpretations, advocating peaceful coexistence, were seen.

It is now clear that the scriptures need to be reinterpreted to realize their full meaning as intended by the authors and to make impact in the lives of the faithful as they strictly adhere to the provisions therein. It is found that there are several modern Islamic scholars who give new meaning to the Qur`anic law by their rereading. There are enough evidences of ambiguities in the interpretation of the Qur`anic law in its advocacy of Jihad. The rereading of the scholars has given a new thrust for peaceful coexistence rather than elimination of people of other faiths. Interpretation of the Sufis has brought the dimension of Jihad as a spiritual warfare against the evil one.

There are express convictions that the Islamic Community is going through drastic transformation in their 'intellectual paradigm'. Such optimistic and open minded willingness to interpret the Qur`anic law is expected to benefit the Muslim community whose major section still remain under ignorance of their own scripture.

The way our Lord Jesus Christ interpreted the Scripture is considered as an example of possible reinterpretation quoting selected texts from the Bible. The reason being that Muslims consider Lord Jesus Christ as the only sinless Prophet and the only one who is going to intercede for the faithful on the day of judgement. Christians and Muslims have many things in common in terms of their understanding of scriptures, religious values and mission. The Bible and the Qur`an should guide their actions leading them to love their neighbours.

7.1 Findings

Here are the findings of the study:

1. That peaceful coexistence is advocated sufficiently in the Qur`anic texts. There are ample references emphasising that Muslims should live in friendly relationship with people of other faiths. Even while condemning idolatry and insisting on mission endeavours, people of such faiths are not expected to be eliminated. Special references repeatedly recommend brotherly love towards Jews and Christians who are like Muslims, guided by Books brought by Prophets like Muhammad. It is implied therefore that they need to be engaged in understanding the scriptures of their respective faiths and in so doing they would have to live in harmony with others.
2. That there are accepted norms set by various schools of law and scriptural scholars. Nevertheless, the interpretation of the law for the people is done by prejudiced Imams and Mullas whose ignorance of the true meaning go with the communication of the word of God. The listeners of such interpretations are mostly uneducated and unable to grasp or discern the truth. It is becoming common even among Christians whose leaders, increasing in number, communicate the word of God with their biased understanding. At the same time there are many Muslim scholars with right understanding of the norms of interpretation who point to the Qur`an as advocating communal harmony.
3. That the Muslim community, appear to be one universal Ummah, being bound by common cultural and social and religious life, are divided in many counts. Denominational or sectarian prejudices play major role in the interpretation of the Law, thereby keeping their own groups under set convictions. Clashes between Muslim sectarian groups on religious matters also contribute to the communal disharmony in the city of Hyderabad.
4. That the Sufis of the mystical Islam interpret the scripture differently in matters relating to Jihad and Muslim approach to non-Muslims. They are deeply involved in a spiritual warfare. Their struggle or war is against the evil spirits and so their mission is to deliver people, irrespective of their

religious affiliation, from the clutches of the demonic powers. Such places of Sufis attract crowds of people from all religions. Their emphasis is spirituality reflected by tranquillity within a person and peace with others.

5. That those who are engaged in the rereading of the Qur`an advocate jihad or holy war against the evil of the society and towards communal harmony. They admit that the Quran is relevant for all ages and all situations. Hence its message must be interpreted meaningfully and as intended by the author.
6. That there is an unprecedented awareness among the Islamic scholars that their masses are lagging behind in every respect due to ignorance. A vast majority of Muslims are not participants of the economic development and that they need to change their mind set. It is realized that such change could be effected only by proper understanding of the Qur`anic law and by peaceful coexistence with others. Religious or social exclusiveness is feared to take them to further backwardness.
7. That Isa al Masih is looked up as the sinless Prophet whose coming again is expected to bring changes in the world order. Christians living in Muslim localities are considered to be trustworthy and service minded. Christians therefore need to be equipped with the scriptures of both religions sufficiently in order to guide the community to the truth.

7.2 Recommendations

There is need for further study in the subject with concentration on the communally sensitive city like Hyderabad. Concrete steps for building communal harmony on the basis of scriptures are to be studied by future researchers. Peace oriented hermeneutical methods to make interpretation of the scripture relevant to the context and situation are to be studied. Effective communication methods to reach common people with the knowledge of scriptures particularly in a multi religious context are to be devised.

‘Where is your brother?’ is a question found both in the Pentateuch (Taurat) and the Qur`an. ‘God the Cherisher of the Worlds’ (Sura V. v. 31) questions Cain, “Where is your brother Abel.” The question is still asked to every believer who, irrespective of religion, requires to respond. God was not pleased

with Cain's answer, "Am I my brother's keeper." "What have you done? Your brother's blood is crying out to me from the ground..." (Genesis 4: 9 - 11). It implies that every believer is his brother's keeper in the sight of God.

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The names of persons interviewed are withheld on their request for anonymity.