

THE INSTITUTION OF AMAN IN THE ISLAMIC LAW OF WAR

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Abstract

On every occasion, Islam insists on the guidance of those who have gone astray; even on the battle field, Islam prefers to guide them rather than to defeat them. It is on the basis of the above important principle that the system of Aman (Giving Quarter) is established in the Islamic law of war. In accordance with this legal institution, war with combatants terminates and their lives and property become secure. The Islamic jurists (Fugaha) resort to the following holy verse of the Glorious Koran as a basis for the legality of Aman: «And if anyone of the idolater seeks thy protection (O Muhammad), then protect him so that he may hear the word of Allah, and afterward convey him to his place of safety» (At-toubeh:6). The institution of Aman is discussed in detail in the present article. The ideas and notions concerning this issue are neatly presented and evaluated. The interpretations of Aman are presented in an elegant manner and are studied in an enlightening fashion. The author has elucidated the topic comprehensively.

Introduction

On every occasion, Islam insists on the guidance of those who have gone astray; even on the battle field, Islam prefers to guide them rather than to defeat them.

It is on the basis of the above important principle that the system of *Aman* (Giving Quarter) is established in the Islamic law of war. In accordance with this legal institution, war with combatants terminates and their lives and property become secure.

The Islamic jurists (Fogaha)⁽¹⁾ mention the following holy verse of the koran as a reason for the legality of *Aman*:⁽²⁾

«And if any one of the idolater seeks thy protection (O Muhammad), then protect him so that he may hear the word of Allah, and afterward convey him to his place of safety. That is because they are a folk who know not.» (At-toubeh 6).

Certain interpreters, too, have raised the issues concerning the contract of *Aman* in interpreting the above-mentioned holy verse. The institution of *Aman* has, as well, been discussed in detail. The establishment of *Aman* concerns those against whom the religious war has been issued. Among these interpreters, Tabarsi and Kortabi have stated that the content of the above-mentioned phrase, «And if anyone of the idolater seeks thy protection», may be interpreted in the following fashion:

«O Prophet, if one of the infidels upon whom the war command has been issued asks for his life-security in order to listen to the koranic reasoning (Hujjat), give him *Aman*.»⁽³⁾

Among other reasons for the legitimacy of *Aman* is Sokoni's narration of Imam Sadegh (Peace Be Upon

Him). The narrator asked his excellency to explain what the Great Messenger (PBUH) meant by:

His excellency replied «while the army of Islam is surrounding a group of infidels, if one of the latter declares «Give me *Aman* so that I may visit and talk to your commander-in chief», and if one of the junior commanders in-chief shows him positive reaction, then the contract of *Aman* is actualized.» It becomes compulsory for the senior commanders in-chief, as well, to accept the contract.⁽⁴⁾ Furthermore, the Sunnite scholars have narrated that the Great prophet (PBUH), on the Day of Hodáybeyeh bestowed *Aman* upon the infidels so that he may sign a peace treaty with them.⁽⁵⁾

There are other narrations, as well, to which on proper occasions we will refer in our future discussions.

At this point, however, it is well worth mentioning that, as it was stated above and as the Islamic Jurisprudent⁽⁶⁾ have alluded to, «the parties of the contract of *Aman*» are the combatants against Islam that is to say, those against whom the Moslems should carry out the Holy Fight (jihad), whether now or in the future. As a confirmation to this, behold what is stated in *Al-Borhan*: A man asked Imam Ali:

«If one of us (infidels), after the passing of those Four Sacred Months (Haram), desires to meet with the Messenger of God in order to discuss certain affairs, is the contract of *Aman still valid?*» That his excellency replied, «Yes, that is the case, because Allah has said; O prophet, if an infidel asks you for protection, provide him with protection so that he may listen to the speech of God, then return him to his place of safety.»⁽⁷⁾

So we see that Imam Ali (God Bless Him) has referred to the above-mentioned verse and has verified the legitimacy of *Aman* in the above-said two cases.

The Notion of Aman in the Definitions Provided by the Islamic Jurisprudent

The great scholar «Allameh Helli» has stated: «*Aman* is meant the stoppage of war against the infidels after they have asked for life security.»⁽⁸⁾ «Shahid Sani» has said, «By *Aman* we mean the speech or whatever substitutes for speech (such as written language or gestures) which is uttered as a reply to the infidels' request for their lives and property.»⁽⁹⁾

The author of «*Javaher*» writes: «By *Aman* we mean the speech and its substitutes which occur on the basis of both parties.»⁽¹⁰⁾

Some of the Sunnite scholars have asserted the contract of *Aman* implies the termination of the conflict with enemy combatants.⁽¹¹⁾

With regard to the collection of the reasoning presented in the Islamic sources concerning the

legitimacy and the manner of performing the contract of *Aman* we may sum up by saying: *Aman* is a written or oral contract which, after the enemy's request for security, and after the approval of the Islam's army to bestow such a security upon him, will be held between the two parties based on the legitimate conditions to provide the enemy with his life and property security.

Kinds of Aman

Aman is of two kinds:

(I) Formal, and (II) Simple or Informal.

(I) The Formal *Aman*: *Aman* is formal when one of the parties to the contract is the Islamic ruler or his fully-authorized representative, no matter whether the other party is the enemy's government or individuals. Such a contract may either be in written or in oral form.

(a) The written contract

The processes needed to hold such a contract include the following:

(1) **Preliminary Talks:** upon the enemy's request or the Islam army's proposal concerning the granting of *Aman* to the enemy, the negotiations start. After the attainment of agreement, the results of negotiations are ready to be written.

(2) **Writing and Signature:** With reference to the comprehensive evaluation which have been carried out regarding the reasons behind legal institution of *Aman* there is no need to apply a specific terminology in writing such as contract. As to this case, the author of «*Javaher*» has asserted, as well: In preparing a contract of *Aman*, what is crucial is to employ phrases which vividly denote *Aman*, such a phrase could be uttered in any language available, either Arabic or other languages. As a confirmation of this claim, behold Imam behold Imam Sadegh's (May God Bless Him) statement: «*Aman* is valid no matter what language is used to utter it.»⁽¹²⁾ «Sarakhsi» too, has stated: «when the Moslems bestowed *Aman* upon the infidels, the latter have a right to *Aman*, regardless of the kind of language used.»⁽¹³⁾

Obviously, both parties will sign the contract after it is prepared.

(b) **The oral contract** Such a contract may be either (1) *explicit* or (2) *implicit*:

(1) **The Explicit Aman:** *Aman* is called explicit if the commander-in chief of the Islam's army explicitly grants to the enemy to enjoy *Aman*. An example of such an *Aman* is the Great Messenger's statement on the Day of the Conquest of Mecca when he declared:

whoever abandons his weapons has got *Aman*; whoever enters Abu Sofyan residence has got *Aman*; and whoever resorts to his home and does not leave it,

will benefit from *Aman*.⁽¹⁴⁾

(2) **The Implicit Aman:** Any behavior or implicit declaration or statement which connotes the intention of the *Aman-giver* in his granting *Aman* is referred to as «implicit Aman»⁽¹⁵⁾

Some of the Sunnite scholars do not believe in *The standard of intention* (in *Aman*). This is exemplified in *Assiyarolkabir*: when a gesture is made to an infidel with no indication of granting any *Aman* upon him, and when the infidel does not grasp the intention of the gesture-performer, but nevertheless conceives an *Aman* from this behavior, *Aman* is materialized. And this verdict is based upon Omar Ibne Khattab when he declared: «when one of the members of the Islam's army with his finger threatens an infidel of the enemy's forces to death; but the threatened individual conceives of *Aman* and approaches the Moslems, his life is secure and he should not get killed.»

It is also said about «Hormozan», when he was brought to the presence of «Omar». Omar told Hormozan: «speak up». Hormozan replied: «shall I use the language of the living or the language of the dead?» Omar answered, «Use the language of the living.» Hormozan then said, «Both you and we were living in the pre-Islamic Ignorance Era (Jaheliyyat). Neither we nor you did have any religion. We considered you Arabs as dogs. Now that Allah has given you splendor and has sent you His Messenger, we will disobey you.»

Now Omar was extremely irritated by Hormozan's aggression and told him, «Now that you are our captive, how dare you utter such a thing? «Kill him at once!» Hormozan inquired: «Is it among your Prophet's teachings to grant *Aman* to captive and then slay him?»

Omar asked him, «when did I grant you an *Aman*?» Hormozan answered, «you granted *Aman* when you asked me to use the language of the living. How is a person alive when he is denied life-security (*Aman*)?»

Then Omar stated, «May God terminate his life! He elicited *Aman* from me in such a subtle way that I was not even able to understand.»⁽¹⁶⁾ This notion is accepted by many Islamic Jurisprudent.

It is written in *Menhajossalehin*: If the infidels ask the Moslems for *Aman* and unknowingly approach them in the belief that Moslems have accepted their request, their lives should be secured by Moslems, Moslems should prepare the means of infidels' return to their camps. The reason for this verdict is the authentic narration by Mohammad Ibne Hákim transmitted by Imam Sadegh (May God Bless Him) when he said: «If a group of enemy asks for *Aman*, but the Moslems have denied them such on *Aman*, if the group unknowingly enters the Moslems' camps, they should be given *Aman*.⁽¹⁷⁾

As a general rule, any infidel entering Dar-ol-Islam under the presupposition of having been granted *Aman*, should be granted *Aman*.

(II) The Simple or Informal Aman

This is a contract which is held between one or more of the Moslems and one or more of the infidel forces. As it is stated in *Shárayeol Islam*: One Moslem (whether a man or a woman) is authorized to hold a contract of *Aman* with a group of as many as ten infidels.⁽¹⁸⁾ Allameh Helli, too, has confirmed these issue: It is permitted for any individual Moslem to grant *Aman* to any individual infidel or to a limited number of them (up to 10) gathering in a small fortified castle.⁽¹⁹⁾

It is also asserted in *Al-Mohazzab*: If one Moslem is willing to grant *Aman* to the infidels, he is authorized to grant such an *Aman* only to one up to ten infidels.⁽²⁰⁾ It is mentioned in *Assiyarolkabir*: The *Aman* given by a free Moslem is valid and binding for others, whether the *Aman-giver* is a just man or sinner. The rationale for this verdict is the Great Prophet's statement: All Moslems share the same blood; they are considered one and united against their enemy:

others should obey the covenant offered by one Moslem. If the word «Adnahom» in the narration just mentioned is derived from Adna meaning «minimum», as it is employed with this sense in the phrase then the statement of our Great Messenger (PBUH) implied the authenticity of one Moslem's *Aman* (bestowing upon infidels). However, if the word «Adnahom» is derived from «Donov» meaning «Proximity», then the phrase

is a clear indication of the validity of the *Aman* of the Moslems residing on the borders next to infidels. Furthermore, if the word Adnahom» is derived from «Denaar», meaning «baseness», then the phrase is a confirmation of the validity of the *Aman* granted by a sinner, because the attribute «baseness» is well-suited to a Moslem sinner. ⁽²¹⁾

It should be mentioned that women are equal to men in granting *Aman* to the enemy. The Islamic jurists, too, have emphasized this equality. Allameh Helli states:

«The *Aman* given by a woman is valid and none of the Islamic jurists (Fughaha) has objected to this verdict. The bestowment of *Aman* by *Omme Hani* was ratified by the Great Messenger, so was *Zeinab's* granting *Aman* to *Assebne Rabi'*.⁽²²⁾ Mohaghegh Helli adds: Men and women are equal in providing the idolater with *Aman*.⁽²³⁾ The author of «*Javaher*» confirming the verdict of both Mohaghegh Helli and Allameh Helli, has ratified their consensus of opinions.⁽²⁴⁾ «*Sarakhsi*» too, has stated,» The *Aman*

given by a free Moslem woman is valid because women, as well, are able to protect the religion. Although they lack the appropriate stamina to engage in fighting, this does not deprive them of granting *Aman*. This is because *Aman* is to help the religion through speech.⁽²⁵⁾

By spending their wealth for Islam, they could protect the Holy War (Jihad); by granting *Aman*, they could defend their religion, as well. Another reason to justify the validity of women's granting *Aman*, is the Great Prophet's ratification of *Aman* provided by Zeinab and Omme Hani.⁽²⁶⁾

What we said above shows the harmony in the verdicts of the Islamic Jurisprudent on the validity of Moslem women's granting *Aman*. But most of them do not consider immature children's grant of *Aman*.⁽²⁷⁾ For instance, Ibne Barraaj states: «the grant of *Aman* by children to idolater is not authentic because they are not mature yet.»⁽²⁸⁾ Another example is the statement of both the author of «*Javaher*» and Mohaghegh Helli: If an immature child holds a contract of *Aman*, his action is not valid.⁽²⁹⁾ Allameh Helli, too, has said: «The *Aman* grant by a child, whether he is discriminative or not it is not valid.» Shafei and Abu Hanife also subscribe to the same opinion, but Malek and Ahmad have declared: The *Aman* given by an immature child is valid. The basis for our statement is a narration in which it is said: A child is not liable for anything it does before it has reached maturity.» Another reason is that a child is immature; therefore, the above verdict is not valid. Ahmad bases his statement on the narration

and has said: A child is a discriminative Moslem. Thus, in the same way that a mature person's *Aman* is valid, so is a child's *Aman*.

We should know that both of these reasons are invalid. Let us look at their first reason. We do not accept their first reasoning because immature children's Islam is not real, but only practice. Consequently their good actions will not carry any religious reward «*Sávab*» for them. We will not consider children as genuine Moslems. Therefore, the above narration will not apply to children.

Their second reasoning is unjustified as well. We may not ignore the differences between the mature and immature persons. This difference shows itself when we consider that the holding of all business transactions by mature persons is valid. Whereas an immature person lacks such an authority; consequently, his *Aman* is not valid. Besides, in our view, a child may not partake in Islam.⁽³⁰⁾

In our view, we should change the manner of our discussion from the Fughaha's point-of-view to a

discussion of whether a discriminative child may take part in jihad. Thus, since the Islamic governor has confirmed the legitimacy of a discriminative child to get involved in jihad his legitimacy in granting *Aman* is implicitly confirmed as well.

It should not be overlooked, however, that the simple (informal) *Aman*, like the formal one; may be written or oral; and the oral *Aman* may be both explicit or implicit. The above classification for formal *Aman* also holds here.

The Factors of the Contract of Aman

a) The Concluder of the contract of Aman (Believer)

We mentioned in our previous discussions that besides the institution of the Islamic sovereignty, the common individuals, too, are allowed to hold the contract of *Aman* with the idolater. The difference only lies in the fact that the Islamic ruler or his representative is allowed to grant *Aman* to the whole enemy army, but the common individuals can do so only to a limited group of idolater. Thus, in the formal *Aman*, the Islamic ruler or his representative is considered the concluder of the *Aman* contract, but in the simple *Aman* this function is done by common people.

In order to clarify the above discussion, let us repeat here the verdicts of some Islamic jurists. In *Sharajeol-Islam* it is stated: Imam and his special deputy are entitled to grant *Aman* upon the whole enemy army or a group there of in accordance with their own discretion.⁽³¹⁾ In this regard all Islamic jurists agree. Of course, all the members of the Islam's army are entitled to grant *Aman* to more idolater than the author of *sharaje* has in mind. For instance, to some of the enemy military members gathered in a forest.⁽³²⁾ It is, as well, mentioned in *Montaha* Imam is entitled to hold a peace treat, with the enemy because like the Great prophet, he is an authority on warfare. Since Imam has got to carry out the prophet's tasks, in the same way he has the right to hold the *Aman* contract; this is because the Great Messenger has given Imam the right to hold such a contract. All Islamic jurists agree on this issue. Certainly, the holding of *Aman* contract depends on Imam; he may, according to his own expediency, grant *Aman* upon the enemy army who have resorted to a fort, upon the population of a country, of a city or a suburb, or upon the enemy army collectively.

Imam's special deputy, too, enjoys the above options. But common Moslems may grant *Aman* upon individuals or a small group of the enemy troop. The basis for the validity of the individual's right to grant *Aman* is the narration

(33) (If one of the Moslems holds a contract with an

enemy member, other moslems have got to stick to the contract).(34)

«Shahid Al-Aval» has said, *Aman* is one of the affairs which causes Moslems to stop war with the enemy. Of course, Imam or his deputy is allowed to grant *Aman* upon the whole population of a city.(35)

It is necessary to mention here that the Islamic Jurisprudent speak of *maturity*, *wisdom* and *option* as three irrevocable requirements for the concluder of *Aman* contract. Among these Jurists, Allameh Helli has said: The concluder of *Aman* contract should possess maturity, wisdom and option in giving *Aman* whether he gives *Aman* to every body or to only a limited number of the enemy troop. Thus, neither the *Aman* of children however discriminative they may be, nor the *Aman* of the insane, nor that of the person threatened to do something «Mokra» is authentic.(36)

It is also stated in *Al-Mohazzab* if the concluder of *Aman* contract is not completely sane, his grant of *Aman* is not authentic.(37) This is because the action of the Moslem who is not fully responsible is not punishable. And the *Aman* of immature children is not valid, either. It is stated in *Sharayea* that the concluder of *Aman* contract should be mature, wise and free in his action.(38)

We mentioned above, under section *In formal Aman*, that if the Islamic ruler permits the discriminative child to take part in *Jihad* (Holy War), naturally, his capability in concluding an *Aman* contract is implied.

d) Mosta'man: Giving Quarter Holder

If an enemy fighter or a previous contract concluder who has broken his promise (for whose action now he deserves death) abandons his weapons and asks for *Aman*, we shall call him?(39) It is stated in *Al mohazzab*: If one of the enemy troop wishes so he may ask for *Aman* for a certain group of idolater.(40) However, it should be noted that an *Aman* contract will not be held with spies and those idolater whose presence in the Islamic territory is deemed pernicious.» 41

e) The text of the Aman contract

As it was mentioned above, the text of *Aman* contract is binding no matter what language is employed. We also referred to the fact that the contract might be oral or even implied by implicit behavior. The factor of *intention* should be taken care of; this is because Allameh Helli has stated that in the conclusion of *Aman* contract, *intention* and *will* play significant role, not the employment of specific words. 42 Thus, different factors, such as, the duties of Mosta'man the duration of the contract and other implied conditions should be stated in the text; in the case of oral; contract, oral agreement concerning the above factors should be

reached.

d) The Duration of the Aman contract

The purpose of the Islamic lawyers in bringing up this factor is to answer the following question: Does the *Aman* contract refer to the time before the captivity of the enemy or does it include the time after the enemy's captivity?

Allameh Helli replies: According to the Shiite scholars, the *Aman* granted to the idolaters by Moslems is valid only during the enemy's captivity. Shafei and most scholars have the same opinion. But Ouza'i believes that this kind of «granting *Aman*» will be valid even after the enemy's captivity. An instance is the case of Zeinab, the Messenger's daughter, who granted *Aman* to her husband Abel Asibne Rabi' and God's Messenger approved of this grant. Allameh Helli rejects this reasoning and adds that the above-mentioned *Aman* got its validity only after the Messenger's verification of the contract and not by itself. Thus, based on this statement, the individual's granting of *Aman* is not valid unless verified and confirmed by the Islamic ruler. For sure, Imam is entitled to grant *Aman* upon the captives because their freedom is in his hands; consequently, granting *Aman* is his privilege, as the Great Messenger confirmed Zeinab's granting *Aman*.(43)

In *Kashfolgheta'* it is stated: Except Imam and his special deputy, ordinary people may grant *Aman* to the enemy only before his captivity. The *Aman* of Imam and his special deputy valid even after the enemy's captivity.(44) Shahid-Al-Aval as well has said: The condition for the validity of *Aman* is that it should occur before captivity. Shahid Sani in explaining this verdict, has said: of course, this condition should be taken care of only in those cases where the ordinary individuals decide to grant *Aman*; but Imam, who is entitled as well to free the captives, has the right to grant *Aman*.(45)

Characteristics and Privileges of the Institution of Aman

1) The stability of the Aman contract and the security of the Giving Quarter Holder

In the Islamic law, contracts, in general, and *Aman* contract, in particular, are considered extremely important. As it was mentioned in section one, the system of *Aman* is among the best institutions of Islamic war law which has got its validity to terminate war with idolater and to secure their lives and Property. This institution is firm and stable and its violation is extremely reproached both in the sources of Islamic law and by the verdicts of the Islamic lawyers. Regarding this topic, Allameh Helli has said, «When the *Aman*

contract takes place according to the conditions raised and discussed within its conclusion (including the duration of the contract, and so on), it becomes obligatory to follow. It is obvious that the following of the contract becomes binding only when its content is not against Islam. There is no objection whatsoever levelled by scholars against the following of this contract.

Related to this topic, Sheikh Tousi narrates from *Abu Abdellah Ibne Soleyman*, who declares that he has heard from Imam Bagher (May God Bless Him) who has said: A man who grants *Aman upon* an enemy and then slays him, will enter the arena of Dooms Day, carrying a flag of treason and deception.

In those occasions where the *Aman* contract is invalid, such as the case when the concluder of the *Aman* contract is either immature or insane, or one of the conditions is anti-Islamic by nature, the Giving Quarter holder should be sent to his place of safety, although this kind of contract is not enforceable. If one of the enemy troops enters the Moslem territory under the illusion that his request for *Aman* is accepted, he should be sent to his place of safety although his request is denied. Mohammad Hakim's⁽⁴⁶⁾ authentic narration from *Abi Abdellah and Abelhassan* (May God Bless Both of them) also confirms this verdict. In their narration, it is stated that according to Imam Sadegh and Imam Kazim (May God Bless Both of them) If a group of Islam's army besiege a city, and if the defeated enemy troops ask for *Aman*, but *Aman* is denied to them, but they move towards Islam army under the illusion that their request is accepted, they will be considered safe from any harm and hazard.⁽⁴⁷⁾

Mohaghegh Helli says «Deceiving the enemy is not permitted.»⁽⁴⁸⁾ the author of *Jawahir*, in explaining this verdict, states: As it is written in *Majma'ol Bahrein* «By deception is meant disregard to one's promise and breaking it.» None of the Islamic jurists has objected to the above verdict, it is because deception is forbidden in Islamic sources; in addition, deception by itself is an improper and unbecoming behavior.⁽⁴⁹⁾

In *Kashfolgheta'*, it is written: *Aman* contract is among the irrevocable ones and its breach is not allowed.⁽⁵⁰⁾ among the Islamic texts, besides *Abu Abdollah Ibne Salman*,s narration, on which *Allameh Helli* has relied, many other verses and narrations have implied the above verdict. Among them is the beginning Holy verse from *Surah Five* (Al-Maedeh), in which God says, «O ye who believe. Fulfill your undertakings.»⁽⁵¹⁾ Another such verse is in *Surah 13 R'ad* verse 25 «And those who break the covenant of Allah after ratifying it, and sever that which Allah hath commanded should be joined, and make mischief in the

earth: Theirs is the curse and theirs the ill abode.»

Another example of such verdict is stated in the Holy *Surah of At-tobah*: «... so long as they are true to you, be true to them. Lo! Allah loves those who keep their duty.» In the verse 190, the *Bagharah*, it is written: «Fight in the way of Allah against those who fight against you, but begin not hostilities. Lo! Allah loves not aggressors. *Allameh Tabatabái* has said «breaking one's promise, which is prohibited in the above Holy verse, is a kind of enmity and aggression;»⁽⁵²⁾ *Imam Ali* (May God Bless Him), has stated, The Hell fire awaits those who break their promises, and get involved in sinfulness and treason.»⁽⁵³⁾ It is also narrated by *Mos-edeh Ibne Sadagheh* from *Imam Sadegh* (May God Bless Him), who said: «when the Great Messenger (S.A) mobilized an army, he would order the commander-in-chief to show virtuousness in his own actions and in his behavior towards others.» Then the Great Messenger should say; «start your fighting by resorting to the Name of Allah, and never break your promise.»⁽⁵⁴⁾ There are other narrations of the same content.

The Great Messenger's precedents are another reason. During his life-time, he would hold contracts with the Jewish tribes of *Bani Ghaynoghha* and *Bani Ghonayzah* and other Jewish tribes. He always kept his promises; he never broke his promise unless in those cases where the enemy members initiated violating a contract. The Great Messenger signed a contract with *Ghoraish* at *Hodaibieh* and continued keeping his promise until they, with the assistance of *Bani Bakr*, rose against *Bani Khoza'*, who were holding a contract with God's Messenger; thus, *Ghoraish* started breaking their promise.⁽⁵⁵⁾

To sum up, we may declare that in Islam the breaking of one's promises is not justified, even if by keeping one's promises, one might lose some property or privileges. Since Islamic commandments are all based on right and reality, none of the followers of Islam is allowed to break his promises. The right action will never bring a person wrong and evil consequences, except those who pick up the wrong way.⁽⁵⁶⁾

2. Unlimited Authority of The Aman Giver

The most significant characteristic of the institution of *Aman* is the fact that it enables even ordinary people to grant *Aman* to the enemy.⁽⁵⁷⁾ And any one of the enemy troops may request for *Aman* for a specific group of them.⁽⁵⁸⁾ Besides, on the basis of the above mentioned feature, the Giving Quarter holder's property will inevitably be safe as a natural consequence of his getting life *Aman*. As *Allameh Helli* has explicitly announced, «The property of the Giving Quarter holder is naturally secure although there is no mention of such security in the contract. This is because an *Aman*

contract makes a Giving Quarter holder immune from any aggression, including aggression toward his property. None of the Islamic jurists has objected to the content of this verdict.⁽⁵⁹⁾

3) The Rights of the Giving Quarter Holder

The granting of *Aman* enables a Giving Quarter holder to enjoy all rights concerning his personal status. He even may take his law-suits to the court.⁽⁶⁰⁾ Hanafiyyeh too, have stated that judges should handle the Giving Quarter holder's affairs, such as debts and transactions. Shafe'i, in one of his views, has offered such a verdict.⁽⁶¹⁾

The Duties of the Giving Quarter Holder

There is no doubt that the management of an Islamic country is based on Islamic laws and regulations, which are binding for every citizen. The Giving Quarter holder, too, because of the enjoyment of the livelihood possibilities and for the security he has obtained for his own and his relatives' life and property, has got to obey all rules and regulations of the Islamic country; any of his aggressive behavior toward the Islamic government will be considered a crime and is subject to trial and punishment. Besides the above mentioned duties, he is subject to civil and criminal responsibilities in his relations with people, such as *retaliation*, false accusation of unlawful intercourse, and usurpation.⁽⁶²⁾ Some of the Islamic jurists, including Abu-Yusuf declare that Giving Quarter holder is subject to all prescribed punishments except the prescribed punishment of alcoholic drink. But Ouza'i and Zeidiyeh name stated: the Giving Quarter holder is subject to every kind of prescribed punishments, even to the *right* of God.⁽⁶³⁾ He has to obey all Islamic regulations in his financial transactions; thus, he is forbidden to get involved in any transaction or usury. The Giving Quarter holder has got to be bound to respect the beliefs of Moslems and to avoid insulting them.⁽⁶⁴⁾

The Termination of Aman

- a) The termination of Aman Duration
- b) Disregard of duties
- c) The Death of the Giving Quarter Holder

a) The Termination of Aman Duration

As it was mentioned in the *Introduction*, *Aman* occurs on the bases of just conditions which are acceptable by both parties. On the basis of this definition, the time length of the contract is determined by mutual agreement. As it is stated in Montahol Matlab, The contract of *Aman* is binding in accordance with pre-determined conditions, such as time-length and so on. 65 The author of «Javaher» too, says: It is written

in *Ghawaedol Ahkam* «The time-length of the *Aman* contract may not last more than one year». But we could not find any reason for this delimitation, and the mentioned reasons are absolute and unspecified by time delimitation.⁽⁶⁶⁾

As it is obvious, the duration of the *Aman* contract is based on the wishes of both parties. Naturally, with the termination of the specified time-duration, the contract itself comes to an end.

It should not be overlooked that the return of the safe-conduct holder to his place of safety and his immunity is the responsibility of the Islamic state; this verdict is verified in the Holy verse of the Glorious Koran: «And if anyone of the idolater seeks thy protection then protect him so that he may hear the word of Allah, and after ward convey him to his place of safety....» (At-tobah: 6).

As it is observed, the last part of the above Holy verse obliges the Moslems to return the safe-conduct holder to his place of safety.

b) Disregard of Duties

If the Giving Quarter holder violates his required duties⁽⁶⁷⁾ and if he commits an unpardonable crime, but does not confront civil and criminal consequences, he will be deported from the Islamic country. Otherwise, the Islamic governor, according to his discretion, will either confirm the contract or will cancel it. It is also possible for the Giving Quarter holder to ask for the continuation of the contract on condition that he would swear he would never repeat the wrong-doing again; it is up to the Islamic governor to decide on the above cases.

c) The Death of the Giving Quarter Holder

It is obvious that with the death of the Giving Quarter holder, the contract of *Aman* comes to an end too. His personal estate which has been protected as a consequence of *Aman* is conveyed to his heir if the latter is a Moslem, other wise according to some scholars,⁽⁶⁸⁾ the estate of the deceased, under specific conditions, will go to other heirs. The author of «Javaher» has said: we can accept his verdict, especially because other heirs of the Giving Quarter holder have been with him.⁽⁶⁹⁾

Aman and Nationality Compared

Since some⁽⁷⁰⁾ assume that *Aman* in the Islamic Fegheh (Jurisprudence) is the same as «nationality» in the private International law, we should briefly explain the difference.

Nationality is one of the political and private International law institutions; it is a political relation between an individual and state; in international circles an individual's nationality indicates to which country he

belongs and which state he is a subject. Nationality is a two-pronged nation; that is to say, it is a reciprocal relation between a citizen and his state, both of which have rights and responsibilities toward each other. One's nationality makes him eligible to enjoy certain privileges and protections which usually belong to the citizens of a country and which the foreigners are deprived of. Conversely, nationality entails some tasks and duties from which foreigners are exempted, such as military service. In other words, a citizen, because of the relationship of nationality, should be loyal to the state, and the state should let him enjoy certain privileges and grant him protection.

Nationality, irrespective of blood and one's birth-place, is mostly acquired automatically and without one's option. It is transmitted to individuals (without their consent). The voluntary acquisition of nationality (naturalization) scarcely takes place and needs specific conditions.

Nationality is an entirely political and non-judiciary affair; it merely depends on the individual and the state; the judiciary system and courts do not legally have any right to grant or to withdraw it.

Iran's civil code, which is in operation now, deals with the issue of nationality in the Articles 976 through 991. It studies the acquisition and withdrawal of nationality. According to the above code, there is no difference between Moslems, Christians, religious people, infidels in the issue of nationality.

There is no similarity between *Aman* and *nationality*; they belong to *Fegheh* (jurisprudence) and the private International law, respectively.

The institution of *Aman* belongs to *Fegheh* it is based on a contract; the Giving Quarter holder should be eligible; it is specific to non-Moslems living in enemy territory and its time-length usually lasts only one year.

On the other hand, *nationality* is a political institution: which belongs to the private International law; it specifies the status of an individual in international circles. It is not a contract; it is a privilege given to an individual; it has daily practical function. The grant and withdrawal of nationality is a political and entirely non-judiciary affair under the supervision of administrative system with no relation with the judiciary system and courts. The basis of nationality of an individual does not rely on his being a Moslem or a non-Moslem. Nationality does not need a contract; the presence of an identification card is enough to verify one's nationality.

References

1. Refer to *Montahal Matlab* by Allameh Helli, vol. 2, page 913 and to *Javaherol kalam*, vol 21, P 92.
2. The Holy Koran, At-tobah: 6.
3. Refer to *Majma'ol Bayan*, Tabarsi, vols 5-6, P 8, Beirut: Ehya't-torath-al-Arabi publishing House; and to *Al-Jameo- le-Ahkamel Quran*, Ghortabi, vol 4, P 76. Beirut.
4. Refer to *Montahal Matlab* by Allameh Helli, vol 2, P 914; and to *was'le shi'e*, vol 11, P 49.
5. Refer to *Montahal Matlab*, vol 2/ P 914.
6. Shahid Sani has stated:
Refer to vol 2, Rouze, P 396, Beirut: Darol alemel Islami. Allameh Helli has said « Ahkam from the book *Yanabio'l- Fegh-hiya* P 256.
7. Ibne Shahr Ashub 'An tafsiroi Ghoshairi:
Refer to *Alborhan Fi Tafsiroi Quaran* by Hashim Bahrani, vol 2, P 106, Qum: Darol kotobel Elmiyeh. This narration is reported a little differently in *Á-Jameo-le Ahkamel Quran*, by Ghortabi. See vol 4, P 76 of the above book.
8. Refer to *Montahal Matlab*, vol 2, P 913.
9. See *Á-Rouzatoi Bahiagh*, vol 2, P 396.
10. See *Javaherol kalam*, vol 2, P 92.
11. See *Asarel Harb fel Feghhel Islami*, P 225.
12. See *Javaherol kalam*, vol 21, P 99.
13. See *Sarakhsi's Asseyarolkabir* with the exposition of Sheibani, vol 1, P 283, Cario: Matba'ol e'lanatesharghieh.
14. See *Almosannefol San'ai*, vol 5, P 376. Refer to *Siare Ibne Hesham* vols 3-4, P 403. Beirut: Darol ma'rafa. In this book we read: «Anybody who enters the mosque should be given Aman.»
15. Refer to *Sharayeol Islam*, vol 1, P 314; see *Javaherol kalam*, vol 21, P 99; and Refer to *Montahal Matlab*, vol 2, P 915.
16. Refer to *Asseyarolkabir* by Sarakhsi, vol 1 P 263.
17. *Alwasa'el*, vol chap. 20, Narration 4.
18. See *Sharayeol Islam*, by *Montahal Matlab Helli*, vol 1, p 314, Beirut: Darol Azwa' publishing House.
19. See *Montahal Matlab*, vol 2, P 914.
20. See *Jahadinabay'ol faghieh*, P 92.
21. Refer to *Asseyarolkabir* with the exposition of Sheibani, vol 1, PP 252-253.
22. See *Montahal Matlab*, vol 2, P 914.
23. Refer to *Sharayeol Islam*, vol 1, P 213, Beirut: Darol Azwa' publishing House.
24. See *Javaherol kalam*, vol 21, P 95.
25. Sheibani has expounded Sarakhsi statement in the following manner: in the word *Aman* the notion of «victory» is implied. And the Holy verse «Lo! we have given thee (O Mohammad) a signal victory.» (:Fa'eteh 1) testifies to this fact. This Holy verse was inspired unto the prophet (peace Be Upon Him) during the holding of peace of Hodaybeyeh. This peace was termed «obvious victory» and «dear victory.» It is a fact that every Muslim is entitled to rise to defend Islam. They should fight till the last enemy is ousted. In that case, the necessity of defense is taken off the shoulders of others. The holding of the *Aman* contract by a group of Muslims is regarded as a collective behavior of all Muslims. See the exposition on *Asseyarolkabir* by Sheibani, vol 1, PP 253-254.
26. Refer to *Asseyarolkabir* by Sarakhsi, with the exposition of Sheibani, vol 1, PP 253-254.
27. One of them has not consider immature children's grant of *Aman* feasible.
28. See *Aljahadel Banabi'* P 78.
29. See *Javaherol kalam*, vol 21/ P 96.
30. See *Montahal Matlab*, vol 2/ P 914.
31. See *Sharayeol Islam* by Mohaghegh Helli, vol 1, P 314, Beirut: Darol Azwa' publishing House.

32. See Javaherol kalam, vol 21 P 96.
33. If one of the Moslems holds a contract with an enemy member, other Moslems have got to stick to the contract.
34. See Montahal Matlab by Allameh Helli, vol 2 P 914.
35. See Al-Lomatodameshghiyaçh Mashghiyeh with the exposition of Rouze, vol 2, P 396. Beirut: Darolelm Islamic publishing House.
36. See Ghawedol Ahkam from the book Yanabiol-Feghhiyaç, Al-Jihad, P255.
37. See Al-Mohazzab by Ibne Baraj, from the book Yanabiol-Feghhiyaç, Al-Jihad, P 92.
38. See Sharayo'l Islam by Mohagheh Helli vol 1, P 313, Beirut: Darol Azwa'
39. See Ghawedol Ahkam by Allameh Helli, from the book Yanabiol-Feghhiya', Al-Jihad, P 256.
40. See Al Mohazzab by Ibne Baraj, P 94.
41. See Ghawedol Ahkam, by Allameh Helli, P 256.
42. Refer to Montahal Matlab, vol 2, P 915.
43. See Montahal Matlab vol 2, P 915.
44. See Ka'shefol Gheta', by sheikh ja'afar Kashfol Gheta', the book Al-Jihad, chap. 3 Section 4.
45. See Aç- Rouzatol-Bahiyeh by Shahid Sani, vol 2, P 397, Beirut: Darolelm Islami.
46. See Malazol Akhiyar vol 9, P 371.
47. Refer to Montahal Matlab, vol 2, P 915.
48. See Sharyeo'l Islam, vol 1, P 312 Beirut: Darol Azwa'
49. Javaherol Kalam, vol 21, P 78 Darol kotobel Islamiya'h.
50. See Kashfol Gheta', Sheikh ja'afar Kashfol Gheta', chap 3/section 4Ketabol jihad .
51. «O ye who believe. Fulfill your under takings» the Maedeh:1.
52. See Almizan fe Tafsirel Quran, by Allameh Tabatabai, vol 9. Beirut: Moasseseh Elmi Almatbuat.
53. See Wasa'el-o-Shi'eh, vol 11, P 52 chap. 20, Jahadel Adovv.
54. Refer to Wasçael-o-Shiçeh, vol 11, P 43, chap 15, Jahadel Adovv.
55. See Almizan fe Tafsirel Quran by Allameh Tabatabai, vol 9, P 189, Beirut: Moasseseh Elmi Almatbuat.
56. Ibid.
57. We have presented valid evidence under the section «Informal Aman.»
58. See Al-Mohazzab by Ibne Baraj, from the book Yanabiol Feghhiya', Al-Jihad, P 94.
59. See Montahal Matlab, vol 2, P 916.
60. In the case of property, the claim is clear. As we saw in the previous section, the property of the safe-conduct holder is secure because of the Aman. The claim for any loss is debatable at the court.
61. See Asarol Harb Fel Feghel Islami vahabahol Zohaili, P 252.
62. Ibid, P 253.
63. Refer to Sharhol kabir, vol 1, P 567, narrated from Asarol Harb Fel Feghel Islami, P 254.
64. See Asarol Harb fel Feghel Islami P 254.
65. Refer to Montahal Matlab, by Allameh Helli, vol 2, P 915.
66. See Javaherol kalam, vol 21, P103.
67. See Sharayeol Islam and Javaherol kalam, vol 21, P 104.
68. Among them are Ibne Hanbal and Safei. See Javaherol kalam, vol 21, P 105.
69. Ibid.
70. File No 771 the court of the Iran-and-U.S claims; Norman Gebai, based on a verdict issued by Jama'al Azhar and in answer to his lawyer's verdict, has claimed that leaving Aman equals the negating of one's nationality. In rejecting this claim and because of the request of the office of Tehran International law services, the president writer has written a comprehensive law-suit.

