

IMPORTANCE OF FUNDAMENTAL RIGHTS IN ISLAM AND ITS POSITION IN CONSTITUTION OF PAKISTAN, 1973

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Abstract:

The principle of egalitarianism and justice is the foundation of the Islamic body politics as justice is placed next to piety in Islam so that no one could dare to transgress his limits as justice is considered life without which welfare of citizen is impossible. Hence the golden principles of justice remained succeeded in obliterating all differences of Race, caste, colour, creed or birth for honour, as most righteous is most honourable in Islam. Pakistan also came into being on the name of Islam, hence in the all constitution of Pakistan fundamental rights which prescribed in the Holy Quran, tradition of Holy Prophet (PBUH), charter of Madina, last sermon of Holy Prophet (PBUH) and principles set forth on the occasion of conquest of Makkah remained cornerstones in the objective resolution, constitution of 1956, 1962 and constitution of 1973. In this articles all that fundamental rights guaranteed in constitution of 1973 has been discussed in the light of the judgments of honorable superior courts raison d'être of creation of Pakistan.

Keywords: *egalitarianism, obliterating, corner-stones, raison d'être*

INTRODUCTION: In the light of the opinion, point of view and commentary of esteemed and renowned jurist and scholars of Islamic teachings, great emphasis has been attached to the importance of justice as well as kindness (Ahsan) in each and every sphere of life as “Justice is life” without which welfare and betterment of citizen is impossible. Hence, it has been declared that “No ‘Maruf’ is better than justice and no ‘Munkar’ is worse than oppression/injustice. History shows that in different eras effort were made to promote judicial and social justice in the light of Islamic principles in Pakistan therefore in all constitutions of Pakistan, Islamic clauses has been inserted, specially constitution of Pakistan 1973 lay great emphasis in this regard, as “objective resolution has been made integral part of constitution. Principles of policy also emphasize on the implementation of Islamic principles in Pakistan.

Government under article 2.A, 227 and 29 has been made bound to formulate policies for the promotion of social, moral and economic well being of every citizen of Pakistan and in this regard fundamental rights has been provided to the citizen of Pakistan. Any action taken by the legislature or the executive in violation of a fundamental right is has been made void in law. Courts are bound to make a declaration accordingly and to give suitable relief to the aggrieved party. In this article the position of fundamental right in Islam and its position in Pakistan has been discussed.

FREEDOM OF SPEECH AND EXPRESSION: It was a time when there was no rule or law in existence according to which man was empowered to ask question from head of

state or chief executive regarding the source of his income or wealth. Although such freedom or liberty to express his views was given to the citizen of Islamic state. This was an Islamic state where any citizen without discrimination of his financial status, cost, creed or language was allowed to ask question in the era of the Hazrat Umar (R.A). History reveals that once Hazrat Umer (R.A) was busy in meeting, a common man came and inquired to explain from what source he had got his shirt stitched completely, whereas it was not possible to get stitched a shirt from the piece of cloth he had got a share from the booty. Upon that question Hazrat Umer (R.A) did not get displeased rather explained to the man that he (R.A) had acquired an other piece of cloth from his son as such he (R.A) got his shirt completed. Above mentioned event did not only example for freedom of speech in Islamic state but highlights the fact that even head of state is answerable before people regarding his activities.¹ In another meeting a common man asked the Holy Prophet (S.A.W) that for what crime his neighbour had been asserted? He repeatedly asked the same question thrice, on hearing his repeated question Holy Prophet peace be upon him orderd to rlesae the person who was kept under detention. Above discussed situation only not reveal principle/rule with respect to freedom of speech but also shows the doctrine of “No arrest (can be made) without due process of law.”² In a verse Allah said “Allah does not like evil talk in public unless, it is done by a person who had been injured thereby.”³ Above Holy verses shows that protest can be done against oppression. Right to speech or freedom of expression is guaranteed under constitution of Pakistan, hence some restriction has been imposed so that, the other citizens fundamental rights could also be protected.⁴ In Pakistan the right of expression considered essential requirement for survival of democratic society and system.⁵

FREEDOM FROM WANTS: Islamic system lays great focuses and emphasis for support of financially weak and wretched people. Needy citizen of Islamic state are to be supported for their employment and in case of non-employment reasonable amount is to be provided by the state from treasury (Bait-ul-Maal) for their livelihood. In the Holy Quran Surah Al-Zariyat expressed regarding the help of helpless and needy people. “And in their wealth there is acknowledged right for the needy and destitute”.⁶ It was time when the Muslim society was not completely set up. This Hadith verse had been revealed at Makkah. This verse emphasize that state is to be provided stipend to the needy and destitute citizen of Islamic state without discrimination of cast, creed religion and geography. It is even responsibility of riches to help rags. Once the second Caliph Hazrat Umer Farooq (R.A) narrating about the responsibility of the head of Islamic state. He said that he would be considered answerable before almighty Allah, if an (animal) dog dies of hunger near the bank of river Nile. This shows the great responsibility fo Muslim ruler with respect to feeding of All creatures of Allah Almighty, residing in his territorial jurisdiction.⁷ In another event which has been explained in various books of history, the Caliph Hazrat Umer (R.A) had seen an old non-Muslim begging charity. He (R.A) said to the beggar “we had taken taxes from you, when you were young and now when you became old, It is in appropriate and against justice we leave you in this condition. Thereafter the Caliph had

immediately ordered to the treasurer to provide stipend from treasury (Bait-ul-Maal) to that non-Muslim old citizen of state.

FREEDOM OF RELIGION: If the charter of Madina is studied it reveals unique and golden principles with respect to the freedom of religion in Islamic state. Hazrat Muhammad (PBUH) had inserted condition in the charter of Madina according to that the Jews had been permitted to perform their religious activities in conformity of their religion.⁸ Allah almighty had said in sura Baqara that “There is no coercion in the matter of faith”.⁹ In another verse Allah said “Do not abuse those they appeal to instead of Allah, lest they insult Allah as an enemy without even realizing it”.¹⁰ Above holy verses very clearly explain about the religious feelings of others (non-Muslim) that peoples are not permitted to meddle in the religion of others. It is highlighted through the Holy verses that the religion and religious affairs of others religion must be paid respect. These directions not only confined to Idols and deities but the leaders or national hero of the people of any religion also respected and must not be humiliated in any form. It is not permitted in Islam to abuse in critical manner for their belief and worship, which may cause any ill. Feeling and may create any inconvenience. A general discussion has not been disallowed in Islam regarding religious precedents. It is said in the Holy Quran: “Don’t argue with the people of the book unless it is in the politest manner”.¹¹ This right is also provide liberty to the citizen of Pakistan to profess or practice of religion/sect of his choice and act as per its teachings.¹²

SECURITY OF LIFE: Islam emphasizes a lot for security of life. In Islamic state security of life is protected. It is grave responsibility of the chief of Islamic state to secure life of every citizen of state without any discrimination, security of life has been provided in the Holy Quran. Allah Almighty says: “whosoever kills a human being (without any proper reason) is like man-slaughter or corruption on earth, it will be deemed as he had killed whole mankind.”¹³ It is also revealed in the same sura that: “And whosoever saves a life, it will be presumed (considered like) that he had saved the lives of all mankind”.¹⁴

The Holy Quran further describes about the sacrosanctity of human life. Allah Almighty says: “Don’t kill a soul, Allah has made sacred, without due process of law”.¹⁵ In a Hadith Holy Prophet (PBUH) also gave greatest importance to the life of human being. He (PBUH) said: “The greatest sins are to associate something with Allah and to kill human being”.¹⁶ It is clear from the Hadith of Holy Prophet (PBUH) as well as Holy Quran that Islam emphasize greatly with respect to the life of any human being without discrimination of cast, creed, colour, language, religion and sex. Allah said: “Anyone who killed a believer deliberately will receive as his reward (punishment) to live in hell forever, Allah will be angry with him and curse him, and prepare dreadful torment for him”.¹⁷ In the last sermon the Holy Prophet (PBUH) said: “Your lives and properties are forbidden to one another till you meet your lord on the day of resurrection”.¹⁸ In another tradition the Holy Prophet said: “One kills a man under covenant, will not even smell the fragrance of paradise”.¹⁹ From the above teachings of Islam which emphasized by Holy Quran and the traditions of Holy Prophet (PBUH) reveals that the protection of life has been guaranteed to Non-Muslims also, who neither indulged nor declared war against Muslims. A deliberate murder of a

men (without sufficient reason) has been declared equivalent to the Murder of whole human being. Security of life of a Man has been deemed as a security of whole mankind. The constitutions of Pakistan also protect the life of every citizen of Pakistan.²⁰ This is right not only to sustain life but also enjoy it.²¹ State is bound to provide basic necessities, even if “Aabadi” has not been declared Kachi aabadi.²² In the recent interpretation of rights of life, the Honorable Supreme Court has included provision of electricity, pure drinking water, education and transportation in the right of life.²³

SECURITY OF PROPERTY: In Islamic state security of property of any man who lives in the jurisdiction of state has also been protected completely. Muslim has been directed to abstain from causing any harm or damage to the property of any person. Security of property has been provided in the Holy Quran. Allah Almighty says: “Don’t devour one another’s wealth by false and illegal means”.²⁴ “O you who believe squander not your wealth among yourselves in vanity except it be trade by mutual consent”.²⁵ Properties of people who are citizen of Pakistan have right under constitution to acquire or hold property subject to prevalent law. Constitution also protects the property life, liberty reputation as well. ²⁶ Event authorities cannot deprives any citizen from his property without fulfillment of required legal and constitutional requirement.²⁷

PROTECTION OF HONOUR AND RESPECT: Islam protects the Honour and respect of all human being and save the dignity of people. Holy Quran says: Don’t spy of each other”.²⁸ Allah almighty further says: “you who believe, don’t let one people make fun of other, don’t defame one another, don’t insult by using nicknames and don’t back-bite and speak ill of one another”.²⁹ It has been considered the tenure of high standard society of civilized world to respect each other with respect to improper remarks; the Hadith of Holy Prophet (PBUH) is being given which shows great dignity of person. Holy Prophet said: “whosoever backbites of other it is in the sense of, as he eats the flesh of his deceased brother”.³⁰ In the light of above mentioned Holy verses and Hadiths. It is clear that man has been prohibited from insulting others and passing unbecoming remarks with respect to a person who is not present before him. In constitutions of Pakistan life mean the life with dignity as well.³¹ Pakistan also came into being on the name of Islam, hence under constitution of Pakistan Honour of every citizen of Pakistan has also been declared sacred.³² In the constitution of Pakistan great importance has been attached to the dignity of citizen. Even if anyone intrudes into the privacy of any man it is presumed that dignity of a citizen has been injured.³³

RIGHT TO JUSTICE: In Islamic state justice is considered essence of Islamic state even justice has been deemed the purpose of Holy books. In Islamic state all are equal before law. No one can deprive of Justice. Allah almighty says: “Establish weight with justice and fall not short in the balance”. ³⁴ In Islam law is equally enforced on all peoples belonging to different classes or castes, rich or poor, white or black. In Islamic state there is no privileged class or individual. Even near and dear ones of authorities of state can avail no exemption. It has been decided by almighty Allah that justice should be established in Islamic state/society at any cost. To provide justice to all peoples Allah has commanded to

the head of state and judges to fulfill their duties for maintaining justice judiciously. Allah says: "Allah commands you that you restore the deposits to those who have deposited, and if you decide between people then you decide with justice"³⁵ With respect to administration of justice fairly, Holy Prophet (PBUH) also laid great emphasis. He (PBUH) said: "During previous Eras, various nations had been destroyed and eradicated from the earth, because they were indulged in considering the status/classes of persons while providing them justice"³⁶ Justice is also guaranteed under constitution of Pakistan as every citizen has been given right to be defended by the lawyer of his choice as well as fair trial.³⁷

RIGHT FOR ASSOCIATION: In Islam the procedure and principles of running the state craft has been described very clearly. The rule of business to run the government activities and to solve the future's issues in decent manners has also been set up under the provision of Islamic law which is called "Shura". In Islamic state, none is above the law. All persons who are pious and have knowledge may take part in accordance with the Holy Quran and Sunnah through reasonable consultation among themselves, any kind of tyranny or dictatorship has been prohibited. Kingdom, individual and family inheritance system of government is also prohibited. All the nobles and matured members of "Shura" have to decide the matter and to solve problems and they are bound to provide inalienable justice. They can participate in the affairs of an Islamic state. This procedure has been prescribed by the creator of the universe. In the Holy Quran Allah almighty said, "Allah has promised to appoint those of you, who believe and do good deeds as (his) representatives on earth".³⁸ In another place in the Holy Quran it has been revealed regarding consultation of people. Allah almighty says, and their business is (conducted) through consultation among themselves.³⁹ Above mentioned right has also been protected and guaranteed to the citizen of Pakistan in constitution of Pakistan also.⁴⁰ In the light of objective resolution and principles of policies state organs are bound to perform their respective responsibilities keeping themselves in the ambit of Islamic principles. Hence, the actions of executive and legislature which are not consistent with fundamental rights given by Islam and guaranteed under constitution will be void in law, and courts are bound to make a declaration accordingly and give suitable relief to the aggrieved party.⁴¹

CONCLUSION: Pakistan came into being on the name of Islam. Muslim had demanded separate independent state where they could be independently and fearlessly preach and practice the Golden principles of Islam enshrined in the Holy Quran and the "Sunnah" of Holy Prophet (PBUH). Since the emergence of Pakistan effort has been made to implement Islamic principles almost by all the governments and inserted clauses regarding Islamic way of life and fundamental right prescribed in the Holy Quran, traditions of Holy Prophet (PBUH), charter of Madina last sermon of Holy prophet (PBUH) and principles set forth on the occasion of conquest of Makkah, where in protection and implementation of fundamental rights without discrimination of caste, creed, religion and language has been made incumbent upon Muslim chief executives. History shows that all the principles followed by the almost all the Muslims rulers and fundamental rights has been protected without any discrimination as Islamic state is a 'welfare state' and responsible for economic

social, educational and moral welfare of all its citizens without discrimination of cast, creed, religion language and financial status. Therefore, fundamental rights has been provided to prosper the citizen of Pakistan and to attain the objectives of objective resolution. In Pakistan also Govt. is bound to formulate policies for the promotion of social, moral and economic well being of all its citizens, Therefore any action taken by the legislature or the executive in violation of a fundamental right has been made void and courts have been making declaration accordingly and giving suitable relief to the aggrieved party.

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