

THE RIGHTS OF CITIZENS AND GOVERNMENT PREROGATIVE UNDER ISLAMIC LAW

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Introduction

The citizens of a state, under the Islamic Law, have certain fundamental rights against the state that must be protected by it. It is only where the state does its utmost efforts in protecting these rights, that it has even the right to exist and have its corresponding rights against the citizens. This means that, under the Islamic Law, as the rights of the citizen are not unlimited and unrestricted so also the prerogatives of the government; both have been categorically defined by the principles of Islamic law. The aim of this paper is to give full exposition of citizens' right vis-a-vis the government prerogatives as provided under Islamic law.

The Rights and Interests of the Citizens

One of the most important functions or responsibilities of the government, under Islamic system, is to organise the state so as to serve the interests of the citizens by having the civil servants to manage the state of affairs and men of wisdom (i.e. the scholars) to give advice.

It is also the responsibility of the government to look after the interests (and rights) of the citizens, protect them against evils and safeguard the interests of the community. In other words the government should look after the material and spiritual interests of the people.

These rights and interests of the citizens, put within the framework of Islamic Law, are normally categorised under the *masalih* (interests) which are divided into three, namely: the *daruriyyat*, (essentials), the *hajiyyat* (complementary) and the *tahsiniyyat* (embellishments) or *kamaliyyat* (amenities).

The *daruriyyat* are those interests on which the lives of the citizens depend and their neglect leads to total disruption and chaos. These consist of the five essential values (*ad-daruriyyatul-khamsah*) which are: religion, life, intellect, lineage and property. These must be promoted and protected against any real or prospective danger or threat which may undermine their safety.

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The *hajiyyat* are the interests whose neglect lead to hardship in the life of the community although not to its collapse and they are supplementary to the five essential values.

The *tahsiniyyat* (also known as *kamaliyyat*) are the interests whose realization leads to improvement and the attainment of which is desirable.¹

From this jurisprudential exposition of the citizens' rights, it is clear that every citizen is entitled to the fundamental rights which are not only limited to tangible things, such as *life, property or lineage but also include dignity, honour and privacy (of their home)*.

On the right to life there are several textual authorities some of which are:-

a) Qur'an 17:34 which provides:-

*"And slay not the life which Allah has forbidden save with right.."*²

b) Qur'an 5:32 which reads

*"... if anyone slew a person — unless it be for murder or for spreading mischief in the land — it would be as if he slew the whole people: and if anyone save a life it would be as if he saved the life of the whole people..."*³

d) The Prophet, (S.A.W), in his sermon, on the occasion of his farewell Hajj, declared: "Behold, your lives and possessions shall be inviolable among you as the sacred inviolability of this day."⁴

On the right to property, there are also several authorities, one of which is 2:188 which provides:

*"Do not eat up your property among yourselves for vanity..."*⁵

On right to honour there are some textual authorities on it, some of which are:

a) 104:1 which reads:

*"Woe unto every slanderer, fault-finder"*⁶

b) 49:12 which reads:

*"O ye who believe! Avoid much suspicions; indeed some suspicions are sins. And spy not, neither backbite one another."*⁷

In the spirit of the above text the Prophet (SAW), as narrated by Abu Hurairah said:

*"Beware of suspicion, for suspicion is the worst of false tales; and do not look for the other's faults, and do not do spying on one another, and do not practice najsh (that is to offer a high price for something in order to allure another customer who is genuinely interested in the thing); and do not be jealous of one another and do not hate one another, and do not desert (stop talking to) one another. O Allah's worshippers! Be brothers."*⁸

On right to privacy, Allah (SWT) in 24:27 says:

*"O ye who believe! Enter not houses other than your own, until you have asked your permission and greet those in them; that is better for you, in order that you may remember."*⁹

In pursuance of all that has been said, every citizen is entitled to live freely, which means the government has no right to arrest him on the basis of suspicion and be thrown to prison without proper court proceedings and without being provided a reasonable opportunity to produce his defence.

The government also cannot arrest or imprison a citizen for the offence of others. This is in accordance with the provisions in 6:164 and 35:18 which provide:

- a) And whatever (wrong) any human being commits rests upon himself alone; and no bearer of burdens shall be made to bear another's burden...¹⁰
- b) And no bearer of burden shall be made to bear another's burden and if one weighed down by his load calls upon (another) to help him carry it, nothing thereof may be carried (by that another), even if it be one's near of kin..¹¹

The occasions in which the government can detain a person have been categorically defined by the Muslim jurists. Thus, al-Khattab in his *Ma'alimus-Sunan* explains such occasions as follows:

- a) where there are orders of the court to that effect, namely, where a person is sentenced by the court and is kept in prison till the expiry of the term of his sentence; and
- b) where the detention is for investigation.¹²

Abu Yusuf, in his *Kitabul-Kharaj* has also stressed the same point, that is nobody can be imprisoned on a false or unproved charges.¹³

On the freedom of a citizen to choose his religion and the prohibition of compelling him to embrace Islam, the Qur'an is categorical on this. Thus 2:256 provides:

"There is no compulsion in religion. Verily the Right Path has become distinct from the wrong paths..."¹⁴

Commenting on the verse, Muhammad Asad says:

On the strength of the above categorical prohibition of coercion (ikrah) in anything that pertains to faith or religion, all Islamic jurists (fuqaha), without any exception, hold that forcible conversion is, under all circumstances, null and void, and that any attempt at coercing a non-believer to accept the faith of Islam is a grievous sin: a verdict which disposes of the widespread fallacy that Islam places to the unbelievers the alternative of conversion or the sword.¹⁵

Right of the Citizens to Basic Necessities and the Government Prerogative:

It is a fundamental principle of Islamic law that no duty (*taklif*) including liability to punishment is imposed on a man without his being granted a corresponding right (*haqq*). Accordingly, it is the inalienable rights of every citizen to be protected by the community as a whole. It is evident from several textual authorities that every citizen is entitled to a share in the community's economic resources and thus, to the enjoyment of social security. This means that he must be assured of an equitable standard of living commensurate with the resources at the disposal of the community. Consequently, the state must run the affairs of the community in such a way that every individual man and woman, will be able to enjoy that minimum of material well-being without which there can be no human dignity and no real freedom.¹⁶

This responsibility (of the state) has been well illustrated by the Prophet (SAW) in a *hadith* narrated by al-Bukhari and Muslim, on the authority of Abdullah ibn Umar, in which he was reported to have said:

Behold, everyone of you is a shepherd; and every one is responsible for his flock. Thus, the imam (i.e. the government) that has been placed over the people is a

shepherd, and is responsible for his flock; and every man is a shepherd over his family, and is responsible for his flock; and the woman is a shepherd over her husband's household and his children, and is responsible for them; and the servant is a shepherd over his master's property, and is responsible for it. Behold, everyone of you is a shepherd, and everyone is responsible for his flock.¹⁷

Commenting on the objective of this *hadith*, Muhammad Asad has this to say:

.. In this tradition the government's responsibility towards the citizens has been put on a par with a father's or mother's responsibility towards their children. Just as the father is a "shepherd"-- that is, a guardian – morally and legally bound to ensure the maintenance and well-being of his family, the government is morally and legally bound to ensure the economic well-being of the citizens whose affairs it administers, and to see to it that no person's standard of living falls below an equitable level.¹⁸

Indicating the limits of this citizen's right, Muhammad Asad says:

This, of course, does not mean that the state should, or ever could, ensure easy and carefree living to its citizens: it only means that .. there shall be no soul-grinding poverty side by side with affluence; secondly, that all resources of the state must be harnessed to the task of providing adequate means of livelihood for all its citizens; and, thirdly, that all the opportunities in this respect should be open to all citizens equally, and that no person should enjoy a high standard of living at the expense of others.¹⁹

All this shows that there is interdependence between citizen's rights and corresponding duties, including liability to punishment, which has made both the rights and the duties of limited scope.

Duty of the Citizens to Obey the Authority of the Government Vis-a-Vis Their Right to Protest Against the Injustice (Perpetrated by the Government) and to Fight Social Evil:

The most fundamental duties of a government which have formed its objectives, according to *Shari'ah*, have been categorically mentioned in the following Qur'anic verses:

a) 57:25 which provides

Indeed We have sent Our messengers with clear proofs, and revealed with them the scripture and Balance (justice) that mankind may keep up justice. And We brought forth iron wherein is mighty power (in matters of war), as well as many benefits to mankind..²⁰

In this verse "iron" symbolises political power and it is clear from the verse that the mission of the prophets of Allah (AS) is to create conditions in which the mass of the people will be assured of social justice in accordance with the principles laid down by Allah (SWT) in His Book.

b) 22:41 which reads

Those (Muslim rulers) who, if We give them power in the land, (they) order for iqamat-as-salat (i.e. to perform the five compulsory congregational salat (prayers).. To pay the zakat and they enjoin al-Ma'ruf (i.e. Islamic monotheism and all that Islam, orders one to do), and forbid al-Mujnkar (i.e. disbelief, polytheism and all that Islam has forbidden)...²¹

c) 3:110 which reads

You are indeed the best community that has ever been brought for the (the good of) mankind: you enjoin the doing of what is right and forbid the doing of what is wrong and you believe in God...²²

It is evident from these verse that, the object of the state (i.e. government), from the point of view of Islamic law, is not merely, according to Maududi "to prevent people from exploiting each other, to safeguard their liberty and protect its subjects from foreign invasion. It also aims at evolving and developing that well-balanced system of social justice which has been set forth by God in His Holy Book. Its objects is to eradicate all forms of evil and to encourage all types of virtues and excellence, expressly mentioned by God in the Holy Qur'an."²³

Any government that fulfils these duties (enunciated by the above-quoted verses); it has the right to claim the obedience of the citizens. In other words they are bound "to hear and obey, in hardship and in ease, in circumstances pleasant and unpleasant,"²⁴ as the Prophet (SAW) was reported to have said. It is regarding such kind of government (which conforms in its principles and methods to the dictates of the *Shari'ah*) that the Prophet (SAW) was reported to have said:

He who withdraws his hand from obedience (to the amir i.e. the government) will have nothing in his favour when he meets God on the Day of Resurrection; and he who dies without having considered himself bound by a pledge of allegiance ... has died the death of the Time of ignorance (i.e. as an unbeliever).²⁵

However, this duty of obedience to the government, is not unconditional. Rather the duty is subject to certain limitations one of which is the inability of the citizen, due to circumstances, beyond his control. To that effect, Abdullah ibn Umar has reported that:

"Whenever We gave our pledge to the Apostle of Allah to hear and to obey, he used to say to us, 'Insofar as you are able to do so.'"²⁶

The other limitation is the event of deviation by the government to the extent of committing injustice and corruption, a matter that is in direct contradiction with the dictates of the Islamic law prescribed by Allah. Obedience to the government in such a circumstance amounts to disobedience to Allah and His Apostle which is not Islamically allowed. And it is a well established principle under Islamic law that if an individual or group of individuals are ordered to commit an evil act or omit an obligatory one by any government, administrator, head of department or any group or individual, they have the right to refuse to comply with the order. The refusal is even, under normal circumstance, obligatory upon the person ordered. This is in accordance with the *hadith* in which the Prophet (SAW) was reported to have said:

No obedience is due in sinful matters; behold, obedience is due only in the way of righteousness.²⁷

In another version of the *hadith*, the Prophet (SAW) said:

No obedience is due to him who does not obey God.²⁸

In yet another version, the Prophet (SAW) said:

No obedience is due to him who rebels against God.²⁹

"All this", according to Muhammad Asad, "presupposes the citizens right and duty to watch over the activities of the government and criticise its administrative and legislative policy whenever there is reason to suppose that matters are wrongly handled. There are many verses in the A.B.U.L.J. Vol. 24 – 25, 2006

Qur'an and many sayings of the Prophet to the effect that to raise one's voice against manifest wrong is one of the foremost duties of a Muslim, and particularly so when the wrongdoer is the established authority."³⁰ Thus the Apostle of Allah (SAW) is reported to have said:

The highest kind of jihad is to speak up for truth in the face of a government (Sultan) that deviates from the right path.³¹

He was also reported to have said:

If any of you sees something evil, he should set it right by his hand; if he is unable to do so, then by his tongue; and if he is unable to do even that, then within his heart – but this is the weakest form of faith.³²

This does not, however, imply that the citizens are entitled to rebel against the government whenever it contravenes any Islamic Law, provided it upholds the values of Islam in general and does not deliberately defy them. Thus occasional lapses on the part of the government does not entitle the citizen to revolt against it. This is by virtue of the *hadith*, in which the Prophet (SAW) is reported to have said:

If anyone of you sees in his amir (i.e. leader) something (evil) that displeases him, let him (nevertheless) remain patient; for, behold, he who separates himself from the united community by even so much as a hand span and dies thereupon, has died the death of the time of ignorance (jahiliyyah).³³

But the important and relevant question, at this juncture, is: to what extent and how long shall the citizens tolerate such government (that commit some lapses against Islamic law occasionally)?

In answering this vital question, Muhammad Asad cited the following two *ahadith*:

- a) The *hadith* narrated by Muslim on the authority of Awf ibn Malik al-Ashja'i, in which the Prophet (SAW) is reported to have said:

The best of your leaders are those whom you love and who love you, those upon whom you invoke blessings and who invoke blessings upon you. The worst of your leaders are those whom you hate and who hate you, those whom you curse and who curse you.

Then Awf said, "O Apostle of Allah! Should we overthrow them, if such is the case."?

He replied, "No so long as they uphold *salat* (prayer) among you; no so long as they uphold *salat* among you."³⁴

The expression of "upholding *salat*" in the context of this *hadith* connotes positive upholding of Islamic faith and not mere holding of congregational *salat*.

- b) The *hadith* reported on the authority of Ubadah ibn Samit (RA) who said, "The Prophet (S.A.W) called us, and we pledged our allegiance to him. He imposed on us the duty to hear and obey in whatever pleases and displeases us, in hardship as well as in ease, whatever our personal preference and (impressed on us) that we should not withdraw authority from those who have been entrusted with it, 'unless you see an obvious infidelity (*kuf*r) for which you have clear proof from (the book of) God."³⁵

After citing the *ahadith*, Muhammad Asad mentions that from these and similar other *ahadith* relating to this point, four principles could be inferred:

- i. that so long as the *amir* (i.e. the leader) represents the legally established government all citizens owe him allegiance, no matter how much they hate him or his acts;
- ii. that whenever the government issues laws or regulations which involve commission of a sin in the strict sense of Islamic Law, the duty of obedience ceases to be operative with regard to these laws or regulations;
- iii. that where the government sets itself openly and deliberately against the text of the Qur'an and the clear and sound text of the *Sunnah*, it may be deemed to become guilty of infidelity, whereupon authority should be withdrawn from it; and
- iv. that this withdrawal of authority must never be brought about by armed rebellion on the part of a minority within the community, because the Prophet (SAW) said, "He who raises arm against us ceases to be one of us."³⁶

Asad then concludes this answer thus:

It is, therefore, evident that the Muslims have been authorised by the Prophet (S.A.W) to disobey the orders of the government which are contrary to Islamic law, and to dispose the government if its

behaviour amount to flagrant infidelity. However, in consonance with the principle of communal unity insisted upon so frequently by the Qur'an and the Sunnah, it cannot possibly be left to the discretion of individual citizens to decide at what point obedience to the amir ceases to be a religious and civic duty; decision of this kind can be taken only by the community as a whole or by its properly appointed representatives.³⁷

Conclusion

It is then clear from this discussion that, from the point of view of Islamic Law, there is always correlation between the prerogatives of the government and the rights of the citizen: thus either of them cannot exist without the other. This has provided real equilibrium between individualism and collectivism. In this way the relationship between the individual and the society has been regulated in such a way that neither the personality of the individual suffers, nor is the individual allowed to exceed his limits to such an extent as to become harmful to the community. This arrangement is the result of the fact that, as Maududi explains, "in Islam the purpose of the individual's life is the same as that of community, namely, the execution and enforcement of Divine Law and the acquisition of God's pleasure."³⁸