

RELIGION AND FUNDAMENTAL RIGHTS IN THE CONSTITUTION

ABSTRACT

The Constitution of a State in abstract sense is the system of laws, customs and conventions which define the composition and powers of the organs of the State and regulate the relations of various State organs to one another and to the private citizens.

In Islamic Legal System where hierarchy and order of priority of sources are carefully maintained, Qur'an, the Holy Book of Muslims, has enjoyed and remains to enjoy the highest position from which the laws of Shariah are extracted and construed in the light of the objectives (Maqasid-e-Shariah) of Shariah (Islamic Law) itself.

It is for this reason that Constitutions of Muslim countries portray the concept of sovereignty different from the one adopted by the Constitutions of Western countries. Sovereignty, as per Islamic Law (Shariah), vests in Allah (God Almighty) and authority to be exercised by the people of a Muslim country within the limits prescribed by God Almighty as a sacred Trust.

The concept of sovereignty adopted in the Constitutions of Arab countries (Egypt, Iraq, Saudi Arabia, Oman, Kuwait, Syria, Yemen) and Indonesia, Malaysia & Pakistan, has been examined to emphasize the distinctive elements and bring out the difference in approach towards norms and values prevailing in the Muslim and non-Muslim countries. The sovereignty in West is practically equated with the will of people as to how they desire to be governed on the basis of the social contract agreed upon by the citizens of a State. American Constitution described such a social contract by declaring:

“We, the people of the United States in order to form a perfect Union, establish justice and ensure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity do ordain and establish this Constitution for the USA.”

The word ‘sovereignty’ has been derived from the Latin word ‘superanus’ which means greatness, supremacy over others etc. Among the Western writers who further developed the concept of sovereignty after Jean Bodin (1530-96) mentionable is Hugo Grotius, the so-called father of modern International Law. He was followed by Hobbes, Lock, Rousseau and John Austin.

According to Qur'an, final and absolute sovereignty wholly and solely belongs to Allah Almighty alone. Since Allah does not directly enforce His sovereignty in matters falling under purview of Shariah, He in His infinite wisdom willed to allow some scope of freedom to human beings, who exercise this delegated authority on a limited scale within the limits and according to the Injunctions prescribed by Him in the Shariah.

The understanding of this distinctive feature of Shariah (Islamic Law) would explain the limits to which the inter-faith dialogue on the West's view of freedom of conscience and religion can be agreed upon by the Muslims. The Muslims are not free to accept the view on morality and social values prevailing at a particular point of time in a particular society. The principles enjoined by Shariah on many matters such as institution of marriage, sex and social values are eternal, well defined and are not liable to change from time to time. Amidst the clash of civilization debate, understanding of role of Shariah in the life and governance of Muslims would, therefore, promote the inter-faith dialogue.

The solution of raging ethnic and religious conflicts such as blasphemy law, treatment of minorities also lies in understanding the views of Muslims with regard to respect of Prophets of Ibrahimic faith. On the issue of reverence of Prophets, position of Bible, Judaism and Qur'an and the laws in force in the West on the subject have been discussed. The moves made for promoting dialogue between Muslims and Western societies, such as Corodoba Initiative, Madrid Dialogue Conference (Saudi-Spanish effort), Assisi inter-faith work of the Late John Paul II, 'The Common World Initiative of Muslim Scholars' and now the present Conference on Religion by ICLARS in Santiago (Chile) have also been noticed in the Article.

The present wave of insurgency and uprising against the dictatorial regimes in the Arab World and other Muslim countries is also the result of persistent denial by the rulers of the freedoms and rights guaranteed to the citizens by Shariah. The Muslims of whatever grade of faith they may belong to, have an innate desire to be governed by Shariah and to enjoy the rights and the freedoms enshrined in Shariah. The denial of these rights by the dictators who are ruling them with the help and connivance of the Western powers, especially, America has produced a wave of hatred against America in the minds of man-in-the-street in the Muslim community.

The peace and tranquility in the world will only prevail by granting rights and freedoms to the citizens in Muslim countries and by promoting understanding between West and Muslim countries through Inter-faith Dialogue. The clash of civilizations can be averted by allowing the Third World countries of which most are Muslim countries, by pulling them out of abject poverty and by ensuring good governance.

Key Words

Ijtihad

It refers to an endeavor of a qualified jurist to derive or formulate a rule of law to determine true ruling of the divine law in a matter on which the revelation is not explicit or certain, on the basis of Nass or evidence found in the Holy Qur'an and the Sunnah. Express injunctions have no room for Ijtihad.

Ijma

Consensus of all or majority of the leading qualified jurists on a certain Shariah matter in a certain age.

Qiyas

Literally it means measure, example, comparison or analogy. Technically, it means a derivation of the law on the analogy of an existing law if the basis ('illah) of the two is the same. It is one of the sources of Islamic law.

Masalaha (pl. Masalih)
The basic values, needs and the benefits of people.

Ummah
Muslim community.

REFERENCES

1. Garner, "Black's Law Dictionary" – Eighth Edition (Thompson West).
2. Constitutions of the Countries of the World – Ocean Publications Inc. New York for seeing the Constitutions of the Muslim Countries discussed in the Article.
3. *De Republic; Jean Bodin. (1576)*
4. State & Religion – Dr. Mahmood Ghazi, International Islamic University, Islamabad.
5. Majella, The Ottoman Civil Code "Qawanin Al-Mulkiyya Li-Aldawlah Al-Alyyah".
6. Holy Qur'an – 5:32
7. Holy Qur'an – 2:256
8. Holy Qur'an – 109:6

9. Speech of Vice-President of India in Delhi Conference, "International Dialogue between Islam & Our Religion" February 2010. (<http://www.unmid.com/news/201>)
10. The Journal of Rotterdam Islamic & Social Sciences Vol. 1 No. 1 2010 – "Values & Norms of Islam".
11. Sovereignty: American Journal of International Law Vol. 22 p. 875.
12. Negationalization Law 1995-99.
13. Law Against Support & Dissemination of Movements Oppressing Human Rights & Freedom 2001.
14. Public Incitement Law 1985, 2002, 2005.
15. Gayssot Act 1995.
16. Denial or Trivialization of Holocaust Law 2010.
17. Criminal Code, Section 283 Liechestein.
18. Criminal Code Act, 1997.
19. Dutch Penal Code 137 c&d.
20. Crimes Against the Polish Nation 1998.
21. Bible Old & New Testament, Bible Society, Lahore Page-75.