

# The Role of Judiciary in the promotion of a culture of Tolerance

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The word “Tolerance” means carrying or lifting an object. It implies the existence of a burden, originally, a physical one and later on mental one. The equivalent words in English language are patience or forbearance. In the Holy Quran, the people have been directed to demonstrate a character of patience and forbearance at number of places.

Since Pakistan is an Islamic republic state and Article 2 of the constitution states that the Islam shall be the state religion, as such I have quoted the meanings of the word “patience” written by a great Islamic scholar Abdulah Yousaf Ali in the English translation and commentary of the Holy Quran, which is in the following terms:-

*“Means, not mere passivity. It is active striving in the way of Truth, which is the way of God. Such striving is the spending of oneself in God’s way, either through our property or through our own lives, or the lives of those nearest or dearest to us, or it may be the loss of all the fruits of a lifetime’s labour not only in material goods but in some intellectual or moral gain, some position which seemed in our eyes to be eminently desirable in itself, but which we must cheerfully sacrifice if necessary for the cause. With such scarifies our apparent loss may be our real gain, he that loses his life may really gain it; and the rewards or “fruits” that seem lost were mere impediments on our path to real inward progress”.*

Unlike many other constitutions, the term “Tolerance” has also been used in the preamble of constitution of the Islamic Republic of Pakistan 1973 in the following words:-

*“Wherein, the principles and democracy, freedom, equality, TOLERANCE and social justice, as annunciated by Islam shall be fully observed”.*

This term provided in the constitution is to be read and understood from the injunctions of Islam as annunciated in the Holy Quran and reflected in the life of the Holy Prophet (PBUH). More than 1400 years after the injunctions of Islam relating to tolerance and also much thereafter of our own constitution of 1973, UNESCO in the year 1995 declared 16<sup>th</sup> November of every year as “THE INTERNATIONAL DAY FOR TOLERANCE”. Every year on November 16, programmes are chalked out and events are exhibited all over the world to create awareness qua the dangers of intolerance.

Under Article 2 and 3 of UNESCO declaration explains two kinds of tolerance or Intolerance. One is at state level and other at social level. The former is brought about by legislation and by enforcement of law through court, while the later is brought about only by education and awareness.

At state level after the dismemberment of the Soviet Union, most of the Muslim countries have suffered injustices at the hands of western super powers. They have demonstrated intolerable and discriminatory treatment towards Muslims as compared to their own communities. It is known to every one that champion of human rights have failed to acknowledge the rights of people of Kashmir, Palestine and others respecting self determination but the same has been granted to the non Muslim population of East Timor and Sudan.

The ethical base of Islam which is derived from the imperatives laid down in the Holy Quran and expressed in the practices of Holy Prophet (PBUH) has given tremendous importance to build a society of tolerance wherein at numerous places this phrase has been mentioned. Hazrat Muhammad (PBUH) faced a number of impediments in propagating Islam while moulding the minds of Arabs during those days. There are numerous instances where His Companions could not tolerate the mal-treatment metted out to him particularly in his journey to Taaif, where people badly caused injuries to him. The Companions requested him and even

Hazrat Jabrail also requested him to pray to Allah Almighty that the aggressors be doomed seeing his injuries at their hands. The Holy Prophet (PBUH) Rahmat-ul-Alimin, instead raised his hands and prayed to Allah Almighty that those people be guided and showed height of tolerance towards the intolerant people of Taaif. On the contrary another Messenger of Allah Almighty prayed, when he was fed up with the behaviour of his people who were not listening to him that those be destroyed. His prayer is mentioned in the Holy Quran in Surah No. 71, Part 29 in the following words:-

*“My lord, Leave not one of the disbelievers on the earth”.*

The Prophet Muhammad (PBUH) on the ninth day of Dhulhijjah, the most blessed day of the lunar year, while indicating the path of righteousness at the congregation of more than three thousand Muslims at Mount Arfat in Makkah during his pilgrimage, delivered his final sermon in a most astounding and touching words in the following terms:-

*“all mankind is from Adam and an Arab have no superiority over a non Arab nor a non Arab has any superiority over an Arab also a white have no superiority over black, nor a black have any superiority over white except by piety as good action and learned that every Muslim is a brother to every Muslim and that the Muslims constitute on the brotherhood. Nothing shall be legitimate to a Muslim which belongs to a fellow Muslim unless it was given freely and willingly. Do no, therefore, do injustice to yourselves”.*

An illustrious covenant signed by the Holy Prophet (PBUH) with a Christian delegation from St. Catherine’s Monastery, demonstrates his remarkable character of tolerance shown towards the Christian which is in the following words:-

*“This is a message from Muhammad ibne Abdullah, as a covenant to those who adopt Christianity, near and far, we are with them.*

*“Verily I, the servants, the helpers, and my followers defend them, because Christians are my citizens; and by Allah! I hold out against anything that displeases them.*

*“No compulsion is to be on them ... Neither are their judges to be removed from their jobs nor their monks from their monasteries.*

*“No one is to destroy a house of their religion, to damage it, or to carry anything from it to Muslims’ houses.*

*“Should anyone take any of these [belongings], he would spoil God’s covenant and disobey His Prophet. Verily, they are my allies and have my secure charter....*

*“No one is to force them to travel or to oblige them to fight. Muslims are to fight for them.*

*“If a female Christian is married to a Muslim, it is not to take place without her approval. She is not to be prevented from visiting her church to pray.*

*“Their churches are to be respected. They are neither to be prevented from repairing them nor [barred] the sacredness of their covenants. “No one of the nation is to disobey the covenant till the Last Day (of Judgment)”.*

Misaaq-e-Madina is another example of tolerance shown by the Holy Prophet (PBUH). I would also mention the tolerance shown by two of our legend Prophets Hazrat Yaqub (Jacob) and Hazrat Ayoub respectively demonstrated by them. The former showed height of tolerance at the disappearance of his younger son Hazrat Yousuf (Josef) at the hands of his jealous brothers while later Hazrat Ayoub during his prolonged disease.

It is not denied that in Pakistan the persistent load shedding of electricity, absence of Gas and hike in the prices of commodities of daily use has generated a culture of intolerance, frustration and despondency among the people.

Since my paper is upon the “Role of Judiciary in the Promotion of a Culture of Tolerance”, as such it is appropriate to mention that there are two types of judicial systems, prevalent in the world. One is adversarial and the other is inquisitorial. The former is practiced in the countries wherever, Union Jack made its way, while the later is in vogue in European countries. We, in Pakistan, are having adversarial judicial system wherein two parties place their case before a judge who simply sits as an empire and

decides the same. Unfortunately, our social culture in the society has also become adversarial towards opposite side.

Intolerance generates from injustices suffered by the people at the hands of the executive or the courts or from social fabric. The most sensitive area in this regard is injustice perpetrated by the courts of law which transform the tolerance into intolerance. The root cause of intolerance generates when the issue is not decided on merit by either forum. There are also other factors which generate intolerance such as ethnic and sectarian issues created by hardliners and politicians who are more prone and susceptible to intolerance.

The courts have got the authority to check the governmental actions by scrutinizing whether the same fully conform to the provisions of the constitution and the law and rectify the same in case of its violation.

An independent and honourable judiciary is indispensable for the dispensation of justice in any society for the eradication of intolerance.

Deference to the judgments and ruling of courts mainly depends on the public confidence respecting the integrity and independence of judges.

In return the independence and integrity of judges depend on their acting without fear or favour.

In Pakistan the military dictators have also eroded the culture of tolerance as they abrogated the constitutions time and again and derailed the democratic system. This action badly hampered the dispensation of justice as the dictators did not tolerate an independent judiciary. Unfortunately, the last dictator after derailing the democratic system in the year 1999 went further in the year 2007 and made an abortive attempt completely exterminating the entire superior judiciary by terminating the services of more than 100 judges of the superior courts and totally restrained their movements. This was only due to the fact that the Hon'ble Chief Justice of Supreme Court of Pakistan did not agree to his illegal demands. The entire lawyers community and civil society

of Pakistan fully supported and encouraged by the electronic and print media started a movement for the Restoration of Judiciary and condemned the nefarious desires of the dictator. This movement continued unabated nearly for two years which efforts were highly appreciated all the world over by the legal fraternity and civil society.

Now after the restoration of independent judiciary, the people of Pakistan are looking towards it for the redressal of all their grievances and in return the judiciary is playing a pivotal role to make Pakistan an Islamic welfare state wherein everybody should enjoy the protection of law and shall be treated in accordance with law which is an inalienable right of every citizen wherever he may be and every other person for the time being within Pakistan as mandated by the Article 4 of the Constitution of Pakistan. By the grace of Allah Almighty our judiciary after its restoration is striving hard to accord dignity to a man in the terms of Article 14 of the Constitution of Pakistan as God Almighty has created him as a superior creature (Ashraf-ul-Makhlookat).

The Chief Justice of Pakistan in collaboration with the other Hon'ble Judges of the judiciary as well as all the stakeholders have formulated a National Judicial Policy through which serious efforts are being made by the courts of Pakistan to clear backlog and dispense justice at the earliest moment so as to create culture of tolerance. It is not denied that the delay in the dispensation of justice has mainly generated the culture of intolerance, frustration and despondency among the people in protecting their rights. I trust in God Almighty, that this despondency and frustration would certainly one day be replaced with culture of tolerance through our judiciary who at this critical juncture of time is performing its duties according to the tenets of Islam. The miseries of teeming millions are worsened when they are exploited through corruption, land mafia and social evil at the hands of grabbers through frivolous litigation. This malady has shattered the fabric of judicial system not only in our country but is a universal problem. It can only be remedied through the appointment of honest and dedicated persons with integrity to dispense justice. A single dishonest appointment without consideration of the aforementioned requirements would have adverse effect upon the whole system. To have even handed

dispensation of justice, I would quote a paragraph written by Hazrat Ali (R.A) to Malik Ashtar, the Governor of Egypt:-

*For dispensation of justice, you must select people of excellent character and superior caliber. When they realize that they have committed a mistake in judgment, they should not persist upon its justification. They should not be corrupt or greedy and must attach the greatest importance to reasoning, arguments and proofs. Pay them handsomely so that their needs are fully satisfied and they do not resort to corruption”.*

If we people of Pakistan adhere to the tenets of Islam as mentioned in above quoted letter of Hazrat Ali (R.A) and Quranic edicts coupled with the practices of the Prophet (PBUH) than in that eventuality, that day would not be far when Pakistan would become a citadel of peace and prosperity. The delay in the disposal of cases is a main hurdle in the role of judiciary in promoting culture of tolerance. A judge of judicial committee of Privy Council as far back as in the year 1872 in the case of “The General Manager of the Raj Durbhunga, under the Court of Wards V. Maharajah Coomar Ramaput Singh 14 MIA 605= 17 WR 459=10BLRPC 294=2Suth: PCJ 117 respecting the plight of litigants in this part of the world stated as under:-

*These proceedings certainly illustrate what was said by Mr. Doyne and what has been often stated before, that the difficulties of a litigant in India begin when he has obtained a decree because the same is hardly executed”.*

The process of execution of decree as in vogue in our system has totally shattered the confidence reposed by general public in our judicial system. Firstly, it takes years for a suit of any kind to reach its logical conclusion. Thereafter, the decree-holder has to file execution proceedings, which more or less is contested like a suit. Sufficient time is spent before the Executing Court and the matter is contested by the judgment-debtor like a suit by filing number of applications just to prolong the matter. It takes years to finalize the same.

Apart from delay in disposal of the cases, the miseries of downtrodden are being multiplied with the unscrupulous and

frivolous litigation of the grabbers, as well as the VIP culture prevalent in our society and rampant corruption. In this regard the Supreme Court of Pakistan by implementing the National Judicial Policy and in the exercise of its suo moto jurisdiction under Article 184(3) of the constitution has promoted a culture of tolerance by giving landmark judgments in the privatization of Pakistan Steel Mills and target killing in Karachi of innocent persons, NRO, Rental Power and many others.

I feel sorry in pointing out that most of the directions of the Hon'ble Supreme Court are not being implemented in letter and spirit, inspite of clear mandate given in Article 190 of the constitution of Pakistan wherein it is stated in the following words:-

*“All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court”.*

I would be failing in my duty if I don't appreciate the restraints and tolerance shown by the Hon'ble Supreme Court towards non implementation of their orders by many organizations. This violation of the constitution by the other organs has also created frustration, despondency, selfishness and intolerance among the people at large.

Had the rulers of Pakistan in early days of its creation taken serious steps to curb the feudal system and misuse of settlement laws to grab the evacuee property, the scenario of Pakistan certainly would have been different today. Both these maladies were tackled across the border by India immediately after its creation but in Pakistan we are still facing the aftermath of both these maladies. At this juncture it is only the superior judiciary which is enjoying the full confidence of the people at large who all are looking towards it for redressal of their grievances. The National Judicial Policy has started playing a pivotal role in the mechanism of earlier decision of cases, which certainly would result in the improvement of tolerant behaviour among the general public as well as all those stakeholders who are in one way or the other having any nexus in the dispensation of justice. A tiny number of unscrupulous lawyers are trying to highjack the District Judiciary which requires to be checked seriously by the Bar Associations as the honour and respect



of this profession revolves around their homogeneous relationship extending respect to each other.