

Human obligations or Human Rights

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Human
rights

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There is a wide demand for Human Rights in the current intellectual discourse in Pakistan. The feminist case is also tied up with the demand for human rights. The preferred medium is courts. Court proceedings of different types are being filed for enforcement of human rights in the High Courts and the Supreme Court. The demanded rights are not confined to those mentioned in the Constitution but include a vast variety.

The demand in every case is from the State, or State-controlled agencies. The attack is directly aimed at the manner in which the national cake of wealth, means for creation of wealth, and resources are divided. The common complaint is that the privileged and the powerful are taking more than what they are entitled to. In every situation the claim is largely based on complaint of denial of equality, and disregard of merit and entitlement.

In so far as injustice and inequity is concerned, the criticism is largely true but this concession does not conclude the debate. The criticism does not adequately deal with inherent differences between claimants for share in the limited resources of the nation and the differences between the rights, privileges and the liberties on the other.

Since the economists assumed the role of God, and pursuit of pleasure and consumerism became the universal and sole objective of the elites, the only advice that the rulers receive is about economic priorities. Their speeches contain little except promises about prosperity around the corner.

Ultimately all rights, one and all, require that some one, the State or individuals or groups of individuals, suffer or perform the obligations for assuring these rights to the claimants. But those who demand the rights pay inadequate attention to or to be more accurate are not clearly in focus about the identity, the limits and the foundation of obligations. How do obligations arise? What are their limits? On whom lies their burden and why? What are the true foundations of these obligations? These are unanswered questions and they are not all. Without answering them the claims to rights remains rhetorical and controversial.

Without fully answering any of the

conservation of received interpretation of religion has proved very useful. They know that once the entrenched traditional interpretations of Divine Law are put out of way, a strong demand for fairer use of wealth and opportunity will inevitably prevail. Quran speaks of three types of obligations of man

(i) those arising out of man's covenant with Allah, which cover every aspect of human life here and in the hereafter.

(ii) those arising out of mutual contracts, like sale, marriage etc.

(iii) situational, i.e. arising out of human relationships and situations in relation to others, in relation whereto moral guidance is provided by Allah, like in case of parents and children, the rich and the poor.

A Muslim wins his Hereafter by his performance within the human situation by means made available to him. The text of the last *khuṭba* delivered by the Holy Prophet (SAW) in the *Hajjatul Wida*, amongst other things, speaks of the assurance of rights of life, honour and property to the members of the *Ummah*. The relevant passage of the *khuṭba* reads as under:

O people, your lives, your honour, and your properties are to be respected by one another till the day of Reckoning comes. They are to be respected as you respect this day, (youm-al-arfa) and this month (zal-hajj) in this city (Mecca).

It is significant that the Holy Prophet (SAW) did not start his mission by speaking of the rights but spoke largely of obligations and the manner in which these obligations are to be fulfilled. Quran says in Sura Al-Tauba that *verily Allah has purchased from the believers their lives and their wealth in exchange for life of jannat*. As a result having bargained their life in this world for a life Hereafter, a Muslim becomes trustee in respect of what he has and wins his hereafter by applying his life and his wealth for service of the objectives approved by the Quran and Sunnah. His life, on the basis of this commitment, becomes a constant effort to use the resources in such ways as would please Allah. His trial in this world consists of how well he performs his obligations arising out of his covenant with Allah. It was for this reason that Umer (RA), the second Caliph, once observed to the effect that if a dog dies of hunger on the bank of Euphrates, he would

sial.

Without fully answering any of the above questions the nation seeks to move forward by expansion of the role of fundamental rights. The favoured instrument is litigation. Often it involves resolution of questions which for a long while were considered to be political questions not amenable to direct judicial intervention not because the judiciary could not decide them; but because they were better resolved by peoples representatives in the parliaments or like of them. There was also a category of contract problems wherein the state or judicial authority could not force a party to do something which it was not required by law to do. Petitions under Article 184(3) in regard to a large number of new problem areas is a typical example of this type of increasing expansion.

Every right has to have a counterpart, person or party who would be mulcted with or who would accept the obligation of performing those duties which would assure the rights to the demanding party. The current discourse is not at all clear about the parties obligated to perform what is demanded of them and to what extent, and on what basis. The rest of this paper is devoted to examination of these questions.

On this point Western jurisprudence does not provide much guidance. The Western thought is itself far from clear about the legal and moral foundation of rights, even though the subject has been debated upon from the Greek period onwards. Even today human rights are a subject dealt with separately from the law of obligations.

observed to the effect that if a dog dies of hunger on the bank of Euphrates, he would be answerable to Allah for this shortcoming. In other words, the duty to provide and to protect arises directly from the covenant with Allah and human existence in this world is the field wherein a human being performs and wins his hereafter. In the teachings of the Holy Quran and the Sunnah, the obligations of an individual precede his so-called rights. It is strong performance of the obligations which enabled Holy Prophet (SAW) to proclaim during the last Haj that equality and right to life, honour and property were assured to each member of the community and were to be treated as sacrosanct on the day of Haj in the holy month of *zal-hajj* in Makkah.

On this approach, the entire concentration of the persons who want to secure human rights to all should be to identify, propagate and enforce the obligations which each person or group or government has and must perform; and more importantly to identify the institutions and the persons who would oppose the results that could flow and the conflicts that will ensue when the prime obligations are performed. This last task has remained largely unattended and therefore the desired results unachieved. The governments of the day in the poor countries of the world, with their limited resources will not be able to fulfil the promises of welfare and a shangrila around the corner. But if attention is focused on the fulfillment of the obligations that Quran and Sunnah place over the Muslims, the results might be surprisingly different. Some of these obligations would

obligations.

Very long time ago Homer pointed out that the essential tragedy of the human society lies in the fact that the powerful take what they want and the weak are obliged to surrender what they must because they have no means to resist; that justice is possible only between equals and alas! human beings are not equal. In the somewhat similar way Hiraclitus, a historian of almost the same era, pointed out that the essence of human tragedy lies in the fact that persons with knowledge of law and commitment to morality have no access to power and power does not voluntarily recognize the limits of law and morality.

In Nations where justice is not common, the demand for human rights is the strongest. Amongst them, the battle cry is that the national cake of resources is apportioned unequally between powerful groups and the rest. To retain power and advantages the elites pay lip service to rule of law and morality, but in fact ferociously protect their special powers, the privileges and the larger than their due share of good things in life. The question arises, what would persuade these persons to surrender the special advantages? All talks about human rights become futile if those in power or having privileges do not in reality recognize the obligations which the rule of law and morality would place over them. For the poor and the deprived life and its opportunities prove fruitless because means of converting them into something productive and satisfactory are not available at all or at the right moment.

The appeals made under the Constitution have over the years proved futile because the powerful and the rich do not feel obliged to surrender their special privileges and undeserved property rights and wealth. More cases for protection of existing property rights are filed under the Constitution than for their distribution and enforcement of equality.

The protagonists of human rights for change in the status quo base their case largely on the declarations of the United Nations regarding human rights or the provisions within the Constitution. They are afraid of basing their claims on any sort of religious foundation because they do not imagine themselves upto the struggle that the process would involve. One part of the struggle would have to be against the entrenched clergy bound by some outdated interpretations and the other against the classes with vested interest for whom the

different. Some of these obligations would be as under:

(i) People should live within their means and not adopt a life style based on constant borrowing, which the West teaches in its programs, both economic and cultural. There should be no extravagance, meaningless display and wastage of resources.

(ii) People must learn to save their resources which they can share with others by charity, productive trade, investment etc. The Holy Quran starts its second chapter with the following verse:

This is a perfect book, there is no doubt in it. It is a guidance for the righteous who believe in the unseen and observe prayer and spend out of what We have provided for them.

The last part of the above verse emphasizes spending and innumerable other verses of Quran explain that such spending is to be for benefit of mankind which of course includes a person's near ones and dear ones.

(iii) What is saved must be invested and the wealth must not be held back or kept out of circulation.

(iv) A Socio-economic situation must be created in which everyone can earn a living by lawful means. The Prophet (SAW) is reported to have said to the effect that most pleasing to Allah is a person who earns and eats by the effort of his hand.

(v) Struggle in terms of the Divine mandate is the obligation of everyone. This struggle is to be carried on in a variety of ways by all strong and weak alike in terms of what sources have been available to them. Says Allah:

And what is the matter with you (that) you fight not in the cause of Allah and of the weak-men, women and children - who say, our Lord, take us out of this town whose people are oppressors, and provide us some friend from Thyself, and make for us from Thyself some helper.

On the basis of the above analysis, the current discourse on human rights is clearly out of tune with the Quranic injunctions. Every act which assures a right ultimately involves a sacrifice, some self-restraint and breaking of a barrier. The movements that Islamic World needs are those in which sacrifice and self-restraint should form the essence of discourse on fundamental human rights. In fact, such programs be called programs for expansion and enforcement of self-restraint and performance of obligations to others, for winning one's own Hereafter.