**A Constitutional Muslim**

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Every time I pass through the Cornelius Underpass on Lahore’s Canal bank Road, I am reminded of one of the greatest sons of this city, who migrated from India at the time of the Partition and opted to make Lahore his homeland to spend the rest of his life in this city. Alvin Robert Cornelius was the only Indian Christian ICS officer in the judicial service who opted to work in Pakistan while all his other colleagues threw in their lot to serve in India. He had already been elevated as Judge of the High Court in 1946. Later, he helped the Government of Pakistan draft laws for refugees and their rehabilitation, which was a stupendous task (that he accomplished with grace and honour). After working for some time as Secretary Law, he was elevated in 1951 as Judge of the Federal Court (which was later named as Supreme court of Pakistan) where he served as a Chief Justice from 1960 to 1968. He was the second longest-serving Chief Justice of Pakistan. After his retirement, he founded a law firm and remained active till 1988, and later he fell ill and died in 1991.

Two Chief Justices of the Supreme Court before him, namely Justice Sir Abdur Rashid and Justice Mohammad Munir, were steeped in the British tradition and were essentially secular in thought. Justice Cornelius, however, was of a different bent. He thought that Pakistan as an “Islamic” country should not entirely follow the British model but create a synthesis of Islamic ideals with modern thought. Later in several judgments, Justice Cornelius demonstrated this synthesis by blending Islamic ideals with modern rational thinking. Once he even referred to himself as a “constitutional Muslim.” By creating a dialogue between Western and Islamic jurisprudence, he made it more intelligible to the common man.

Another contribution of Justice Cornelius was that he broadened the scope of fundamental rights in Pakistan. Despite the fact that during his tenure as Chief Justice of Pakistan, the country remained mostly under Martial law when parliamentary democracy had been stifled during the Ayub regime, he ensured that the courts played their part for the protection and enforcement of fundamental rights in the country.

Justice Cornelius is remembered for his emphasis on the rule of law and due process of law.

Justice A R Cornelius had the highest regard for the principles of truth, equity, and good conscience. He had earlier played his role as a prominent freedom activist of the Pakistan movement. He believed that the religion of Islam was based on the pristine principles of justice and equity, which made him the “most unlikely champion of Islamization.” Thus, being a patriotic citizen of a new emerging Islamic state, he became a renowned advocate of human rights.

Mr. Hamid Khan, a senior advocate of Supreme Court, in an article “Justice A.R. Cornelius: Services and Contributions to Justice System in Pakistan” wrote, “The cornerstones of Justice Cornelius’s legal philosophy could be summarized in three points: (a) Law has a moral function in society; (b) Law should be culture-sensitive, and (c) Islam is a valid foundation for a universal society.”

The judgments of Justice Cornelius formed the basis for introducing “judicial review” of administrative action, and the principles of natural justice. His historic dissent in Maulvi Tamizuddin’s case is a model of judicial courage and uprightness in the annals of the history of Pakistan. The background of this case is that in April 1953, the Governor-General by using his arbitrary powers dismissed the government of Khawaja Nazimuddin. To curb such activities in the future, the Constituent Assembly passed two amendments curtailing his jurisdiction. In response, the Governor-General dissolved the Constituent Assembly and proclaimed emergency, and formed a new government under Mohammad Ali Bogra. Bogra included General Ayub Khan, the C-in-C in his cabinet as Defense Minister. This was the beginning of the army taking over civilian responsibilities and the end of the supremacy of the civilian over military power. Maulvi Tamizuddin Khan, being the President of the Constituent Assembly, challenged emergency and dissolution of the Assembly, as “unconstitutional and illegal.”

A full bench of the Sindh Chief Court unanimously decided in favour of Maulvi Tamizuddin Khan. But later, on appeal, the decision of the Sind High Court was set aside with a majority of four to one. Justice Cornelius was the only judge in the five-member bench, who wrote a dissenting note, and upheld the judgment of the Sind Chief Court. Had the opinion of the majority of the Federal Court been the same as was held by Justice Cornelius, the constitutional history of Pakistan might have been different today. Nonetheless, the opinion of Justice Cornelius in this case greatly influenced the Federal Court in subsequent judgments.

Later, in the Youssef Patel case, the Federal Court held that the Governor-General had the powers to validate the laws retrospectively under the ‘state necessity.’ But Justice Cornelius held that there was no provision in the Constitution by which the Governor-General could validate the Emergency Powers. In Dosso’s case, Justice Cornelius concurred with the majority view that a successful coup is an internationally recognized method of changing a constitution but contrary to the majority opinion he held that fundamental rights did not cease with the imposition of martial law, as these rights were essentially human rights which did not need a written guarantee and inherently belonged to every citizen of a country. In Moulana Maududi’s case, he held that any law in conflict with the fundamental right of freedom of association guaranteed by the Constitution would be void. Justice Cornelius contributed to the development of the doctrines of “judicial review” and “separation of powers” in Pakistan. He considered the function of judicial review to act as “a check against excess of power in derogation of private right.”

He believed that the fundamental rights provided in the Constitution of Pakistan were based on the principles of democracy, freedom, tolerance, and social justice as initiated by Islam.

He is remembered for his emphasis on the rule of law and due process of law; the enforcement of fundamental rights; separation of powers particularly between the executive and the judiciary; insertion and inclusion of principles of natural justice in every proceeding of judicial, quasi-judicial, and administrative nature; quashment of mala-fide acts and orders of the public officials; and protection of citizens from unnecessary and unjustified detention under preventive detention laws are the basis of the liberal jurisprudence that he established for Pakistani citizens and successive generations.

In short, the fundamental rights and civil liberties guaranteed to citizens under the Constitution were developed into a living law by the judgments of Justice Cornelius in the very initial years of the existence of Pakistan. His judgments leaned towards democratic principles. He has thus rendered a permanent service to the people of Pakistan by extending the rule of law, due process of law, equality among citizens, fundamental rights, and democracy.

And last but not the least, Justice Cornelius has been regarded as the Father of cricket in Pakistan. He had an unwavering love for cricket and had played good cricket at Cambridge in his youth. For several years, he remained President of BCCP and took Pakistan to the heights of glory in international cricket.

In personal virtues, he had no equal. Despite holding prestigious posts all his life, the Cornelius family lived a frugal and simple life. He once remarked, “For our people, affluence is poison.” He and his family lived in rented houses until 1948 and later he shifted to Faletti’shotel in Lahore where he stayed for thirty years until his death in 1991. He never moved to the official house of the Chief Justice and led an austerely simple life. He did not like fanfare or an entourage of retainers or bodyguards to which he was entitled as a former Chief Justice of Pakistan. He retained his only British-made car Wolsely, a 1953 model, till the end of his life.

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